TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1905.

No. 141.

THE SOUTHERN PACIFIC RAILROAD COMPANY, HOMER S. KING, TRUSTEE, AND CENTRAL TRUST COMPANY OF NEW YORK, APPELLANTS,

vs.

THE UNITED STATES.

APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT.

FILED DECEMBER 17, 1904.

(19,568.)

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Circuit Court of the United States, Ninth Circuit, Southern District of California.

UNITED STATES, Plaintiff, vs. SOUTHERN PACIFIC RAILROAD COMPANY et al., Defendants.	)	No. 878.

Citation.

UNITED STATES OF AMERICA—ss.

To the United States of America, Greeting:

You are hereby cited and admonished to be and appear at the United States Circuit Court of Appeals for the Ninth Circuit, at San Francisco, California, on March 9th, 1903, pursuant to an appeal filed in the clerk's office of the United States Circuit Court, Ninth Circuit, Southern District of California, in case No. 878, wherein the United States of America is plaintiff, and the Southern Pacific Railroad Company and others are defendants, to show cause, if any there be, why the decreee rendered in said cause on December 15th 1902, by the said United States Circuit Court against the said defendants Southern Pacific Railroad Company, Homer S. King, as trustee, and Central Trust Company of New York, as trustee, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Given under my hand, at the city of Los Angeles, on February 9th, 1903.

OLIN WELLBORN,
Judge.

I received copy, and acknowledged service, of within citation on February 9th, 1903.

JOSEPH H. CALL,
Special United States Attorney.

[Endorsed]: No. 878. U. S. Circuit Court, 9th Circuit, Southern Dist. of Cala. United States vs. S. P. R. R. Co., et al. Citation. Filed, Feb. 9, 1903. Wm. Van Dyke, Clerk.

In the United States Circuit Court, Southern District of California, Ninth Circuit.

THE UNITED STATES,
Plaintiff,
vs.
THE SOUTHERN PACIFIC RAILROAD COMPANY, and Others,
Defendants.

Bill of Complaint.

The United States, by the Attorney General thereof, brings this its bill of complaint against the Southern Pacific Railroad Company, a corporation organized and existing under and by virtue of the laws of the State of California, D. O. Mills and Homer S. King, trustees, residing in California, and The Central Trust Company of New York, trustee, a corporation organized and existing

under and by virtue of the laws of the State of New York, residing in New York, and against the following named persons, they representing a class of persons holding titles to lands under said Southern Pacific Railroad Company who are too numerous to be made parties to this suit, said persons, representing them, being, to wit:

M. L. Wicks, Alice V. Slosson, Ivar A. Weid, James Mair, Pomona Land and Water Company, a corporation organized under the laws of California, T. Banbury, Burdett Chandler, H. H. Linville, J. R. Nevin, Henry M. Loud, William Thorpe, Fairmount Land and Water Company, a corporation organized under the laws of California, and residing in California.

And thereupon your orator complains and shows unto the Court that by the act of Congress approved July 27, 1866, entitled "An act granting land to aid in the construction of a railroad and telegraph line from the States of Missouri and Arkansas to the Pacific Coast," Congress incorporated the Atlantic & Pacific Railroad Company and granted to said company, in aid in the construction of said railroad, a large amount of lands in the State of California and other states and territories, and to the whole of which said act your orator refers. (See United States Statutes, vol. 14, l. 292.)

Your orator further shows that by section 18 of said act, Congress authorized the Southern Pacific Railroad Company, a company incorporated under the laws of California, to connect with said Atlantic & Pacific Railroad, and to aid in its construction, made to said Southern Pacific Railroad Company a grant of lands upon the

same terms, conditions and limitations as the grant to the said Atlantic & Pacific Railroad Company.

Your orator further alleges that the Southern Pacific Railroad Company referred to in section 18 of said act of July 27, 1866, was a corporation organized under the laws of California authorized by its articles of incorporation to construct a single line of railroad from the bay of San Francisco through the counties of Monterey and Los Angeles to the town of San Diego and thence easterly through the county of San Diego to the Colorado river.

Your orator further alleges that during the years 1867, 1868 and 1869 said Southern Pacific Railroad Company contended before the Interior Department that it had a right to file a map of general route under said section 18 from the bay of San Francisco by way of Mojave, thence easterly to the Colorado river at or near the present town of Needles, but that such claim made by said company was not recognized by the officers of the Interior Department, but, on the contrary, was repudiated.

Your orator further alleges that on the 3d day of January, 1867, said Southern Pacific Railroad Company filed in the Interior Department, without authority so to do, a map designating its proposed preliminary or general route from the bay of San Francisco via Mojave to the Colorado river at Needles, upon which it was adjudged by the then Secretary of the Interior that such map represented a line of route not authorized by the charter of said company or by the laws of California or by section 18 of said act of Congress of July 27, 1866.

Your orator further alleges that on April 4, 1870 the legislature of the State of California passed an act by which said Southern Pacific Railroad Company was authorized and empowered to change the line of its railroad so as to reach the eastern boundary line of the State of California by such route as the company should determine to be the most practicable.

Your orator further alleges that by the joint resoiution of Congress approved June 28, 1870 (16 Stat. 382) the Southern Pacific Rairoad Company was authorized to construct a line of railroad as near as may be upon the line of route indicated by the map filed by said company in the Interior Department on January 3, 1867, and by said resolution there was granted to said Company lands to the extent and amount granted to said company by said act of Congress of July 27, 1866, subject to all the conditions and restrictions provided for in the 3d section of said act.

Your orator further shows unto the Court and alleges that by the act of Congress approved March 3, 1871 entitled "An act to incorporate the Texas Pacific Railroad Company and to aid in the construction of its road, and for other purposes" (See U. S. Stats. Vol. 16, pp. 573-9), Congress incorporated and created the Texas Pacific Railroad Company and granted to said company to aid in the construction of said railroad a large amount of land in the State of California, and other States and territories, and to the whole of which said act your orator refers.

Your orator further shows to the Court that by section 23 of said act of Congress approved March 3, 1871,

it was provided as follows: "That for the purpose of connecting the Texas Pacific Railroad with the city of San Francisco, the Southern Pacific Railroad Company of California is hereby authorized (subject to the laws of California), to construct a line of railroad from a point at or near Tehachapi Pass, by way of Los Angeles, to the Texas Pacific Railroad at or near the Colorado river, the same rights, grants and privileges, and subject to the same limitations, restrictions and conditions, as were granted to the said Southern Pacific Railroad Company of California by the act of July 27, 1866, provided, however, that this section shall in no way affect or impair the rights, present or prospective, of the Atlantic & Pacific Railroad Company, or any other railroad company."

Your orator further shows that said Atlantic & Pacific Railroad Company duly accepted said grant, and the terms and conditions of said act of July 27, 1866, within the time and manner therein required, and did designate upon plats or maps the whole of its line of route under said act, definitely locating the same from Springfield, Missouri, by way of the points and places named in said act, to the Pacific Ocean at San Buenaventura, in the State of California, and did file such plats or maps designating said line of route in the office of the commissioner of the general and office within the time and in the manner provided in said act, definitely establishing the whole thereof.

That said company filed maps of definite location designating that part of its said line in the State of California in said office of the commissioner of the gen-

eral land office in the year 1872, and as said plats or maps were so filed in the Interior Department they were each then approved by the Secretary of the Interior, and upon the filing of such maps or plats as aforesaid the United States withdrew from market and reserved all the odd numbered sections of land in California within thirty (30) miles of said line of route, including the lands hereinafter described, and in pursuance of orders of the Secretary of the Interior and commissioner of the general land office, said withdrawal and reservation of said lands was made then of record in the general land office and United States district land offices in California by proper plats, diagrams and maps, to all of which your orator refers.

Your orator alleges that said Atlantic & Pacific Railroad Company did not, within the time or manner required by said act of Congress of July 27, 1866, nor at all, construct or complete any railroad or telegraph line, in whole or in part, within the State of California, and that by the act of Congress of July 6, 1866 (24 Stats., p. 123), all lands and rights to lands granted to and conferred upon said Atlantic & Pacific Railroad Company, and situated within the State of California, were forfeited and resumed to the United States, and said lands were restored to the public domain, including all the odd numbered sections of land for thirty (30) miles on each side of said line of route of said Atlantic & Pacific Railroad Company definitely fixed as aforesaid, between the eastern boundary of California and the Pacific Ocean at San Buenaventura, which lands were then owned by your orator.

Your orator further shows unto the Court and alleges that all the lands above described were granted to said Atlantic & Pacific Railroad Company by said act of Congress making said grant to said company, and from the date of said grant to said company as aforesaid until said lands and rights to lands were forfeited as aforesaid, said company claimed to own said lands, and had a prospective as well as present rights to said lands; and during all of that time said lands were reserved by the United States for the benefit of said Atlantic & Pacific Railroad Company.

Your orator further alleges that said lands within the thirty mile limits of and appertaining to the said Atlantic & Pacific Railroad Company were not granted to defendant Southern Pacific Railroad Company by either or any of said acts of Congress, but on the contrary they were set apart and devoted by the United States to aid in the construction of said Atlantic & Pacific Railroad and were reserved from and excepted out of all grants made to said Southern Pacific Railroad Company and neither said company nor any of the defendants herein have any right, title or interest to said lands or any thereof by virtue of any grant made to said Southern Pacific Railroad Company.

Your orator further alleges that the lands described in Exhibit "A" attached to this bill and made a part hereof were within the said thirty mile limits of the said Atlantic & Pacific Railroad located as aforesaid and appertained to the grant to said company.

Your orator further alleges that regardless of the rights of your orator the Southern Pacific Railroad

Company and the other defendants herein claimed and still claim some title and interest in the said lands described in Exhibit "A" under some or all of said acts of Congress granting lands to said company, the precise nature and extent of which claims being unknown to your orator, but your orator alleges that all of such claims are unfounded.

Your orator further alleges that on the 12th day of December, 1892, in a suit then depending in the Supreme Court of the United States, in which the United States was plaintiff and appellant and the Southern Pacific Railroad Company and D. O. Mills and G. L. Lansing, trustees (predecessors in interest of defendants Mills and King, Trustees), were parties defendant and in which suit defendant herein Central Trust Company and the other defendants were represented by said Southern Pacific Railroad Company, who, at their direction, defended said suit in its own behalf as well as in their behalf and in which suit it was finally and conclusively adjudged and determined by the said Supreme Court:

"1. That the maps filed by the Atlantic & Pacific Railroad Company in 1872 were sufficient, as maps of definite location, to identify the lands granted to the company by the act of 1866.

2. That upon the acceptance of those maps by the Land Department, the rights of that company in the lands so granted, attached, by relation, as of the date of the act of 1866; and,

3. That in view of the conditions attached to the grant, and of the reservation of power in Congress contained in the act of 1866, such lands became, upon the

passage of the forfeiture act of 1886, the property of the United States, and by force of that act were restored to the public domain, without the Southern Pacific Railroad Company having acquired any interest therein that affected the power of the United States to forfeit and restore them to the public domain."

And it was further adjudged by said Court in said cause that the lands within the thirty mile limits of the said Atlantic & Pacific Railroad were lands appertaining to and set apart by the United States to aid in the construction of the line of road of said Atlantic & Pacific Railroad Company.

Your orator further alleges that on the 18th day of October, 1897, in another suit then depending in the Supreme Court of the United States, in which the United States was plaintiff and appellee and the Southern Pacific Railroad Company was appellant and defendant, in its own behalf and acting for the parties above named in said former suit, defendants herein, it was by said Court again finally adjudged and determined in all and every respect as it had been theretofore adjudged and determined in said decision of December 12, 1892.

Your orator further alleges that subsequent to the passage of said act of Congress of March 3, 1871 and prior to the year 1896, patents were erroneously issued by the Department of the Interior to defendant Southern Pacific Railroad Company, In due form, purporting to convey to said company the lands described in said Exhibit "A" attached hereto.

Your orator further alleges that more than ninety days prior to the commencement of this suit the Secre-

tary of the Interior demanded of defendant Southern Pacific Railroad Company a reconveyance and relinquishment to the United States of the said lands so erroneously patented, which said reconveyance and relinquishment was then and still is refused by said company.

Your orator further alleges, upon information and belief, that prior to December 1, 1889, said railroad company sold some of said lands or some interest therein to numerous persons, but your orator is not able to set forth the names of the persons to whom such lands have been sold in good faith or the extent of the interest conveyed or the amount paid by such purchasers respectively or the dates of such payments except as to those certain lands described in Exhibit "B" annexed to this bill, which lands your orator alleges, were sold to numerous persons, purchasers in good faith and whose titles to said lands were confirmed by the act of Congress of March 2, 1896, hereinafter particularly mentioned, and for which lands said Southern Pacific Railroad Company has received more than two dollars and fifty cents ($2.50) per acre and your orator alleges that said lands and all of the lands described in said Exhibit "A" are of the value of more than two dollars and fifty cents ($2.50) per acre.

Your orator further alleges that the lands granted to defendant Southern Pacific Railroad Campany by section 18 of the act of Congress of July 27, 1866, and by joint resolution of June 28, 1870, and by section 23 of the act of March 3, 1871, were all granted upon the same terms, conditions, restriction and limitations as those granted to the Atlantic & Pacific Railroad Company by

the said act of July 27, 1866, and that by section 20 of the said act of July 27, 1866, Congress expressly reserved the right and power to alter, amend or repeal that act.

Your orator further alleges that in pursuance of the right and power of Congress to alter, amend or repeal the said acts granting lands to defendant Southern Pacific Railroad Company and the said Atlantic & Pacific Railroad Company that by an Act of Congress approved March 3, 1887 (24 Stat. 556) it was provided in section 1 thereof as follows:

"That the Secretary of the Interior be, and is hereby authorized and directed to immediately adjust, in accordance with the decisions of the Supreme Court, each of the railroad land grants made by Congress to aid in the constructions of railroads and heretofore unadjusted."

And by section 2 of said act it was provided as follows:

"That if it shall appear, upon the completion of such adjustments respectively, or sooner, that lands have been, from any cause, heretofore erroneously certified or patented by the United States, to or for the use or benefit of any company, claiming by through or under grant from the United States, to aid in the construction of a railroad, it shall be the duty of the Secretary of the Interior to thereupon demand from such company a relinquishment or re-conveyance to the United States of all such lands, whether within granted or indemnity limits; and if such company shall neglect or fail to so re-convey such lands to the United States within ninety days after the aforesaid demand shall have been made, it shall thereupon be the duty of the Attorney General to commence and prosecute in the proper courts the necessary

proceedings to cancel all patents, certification or other evidence of title heretofor issued for such lands, and to restore the title thereof to the United States."

And by section 4 of said act it was provided as follows:

"That as to all lands, except those mentioned in the foregoing section, which have been so erroneously certified or patented as aforesaid, and which have been sold by the grantee company to citizens of the United States, or to persons who have declared their intention to become such citizens, the person or persons so purchasing in good faith, his heirs or assigns, shall be entitled to the land so purchased upon making proof of the fact of such purchase at the proper land office, within such time and under such rules as may be prescribed by the Secretary of the Interior, after the grants, respectively, shall have been adjusted; and patents of the United States shall issue therefor, and shall relate back to the date of the original certification or patenting, and the Secretary of the Interior, on behalf of the United States, shall demand payment from the company which has so disposed of such lands of an amount equal to the Government price of similar lands; and in case of neglect or refusal of such company to make payment as hereafter specified, within ninety days after the demand shall have been made, the Attorney General shall cause suit or suits to be brought against such company for the said amount: Provided, That nothing in this act shall prevent any purchaser of lands, erroneously withdrawn, certified or patented as aforesaid from recovering the purchase money therefor from the grantee company, less the amount paid to the United States by such com-

pany as by this act required; And provided, That a mortgage or pledge of said lands by the company shall not be considered as a sale for the purpose of this act, nor shall this act be construed as a declaration of forfeiture of any portion of any land grant for conditions broken, or as authorizing an entry for the same, or as a waiver of any rights that the United States may have on account of any breach of said conditions."

Your orator further alleges that in pursuance of such right and power to alter, amend or repeal said acts, Congress, on February 12, 1896 (29 Stat. 6) passed a further act in and by which it was provided,

"That where such purchasers, their heirs or assigns, have paid only a portion of the purchase price to the company, which is less than the Government price of similar lands, they shall be required, before the delivery of patent to their lands, to pay to the Government a sum equal to the difference between the portion of the purchase price so paid and the government price and in such case the amount demanded from the company shall be the amount paid to it by such purchaser."

Your orator further alleges that in pursuance of said right and power to alter, amend and repeal said acts, Congress, by the act approved March 2, 1896, (29 Stat. 42), further provided that as to lands erroneously patented to any railroad company that,

"No patent to any lands held by a bona fide purchaser shall be vacated or annulled, but the right and title of such purchaser is hereby confirmed."

Your orator further alleges that by section 2 of said act of March 2, 1896, it was provided as follows:

"and if such claimant or one claiming to be a bona fide purchaser, but who has not submitted his claim to the Secretary of the Interior, is made a party to such suit and is found by the Court to be a bona fide purchaser, the Court shall decree a confirmation of the title and shall render a decree in behalf of the United States against the patentee corporation, company, person or association of persons for whose benefit the certification was made for the value of the land, as hereinbefore provided."

Your orator further alleges that more than one thousand persons, among whom are the defendants above named, sued as representatives of a class, have purchased by immediate or mesne conveyances from defendant, Southern Pacific Railroad Company, certain tracts of land described in said Exhibit "A" to this bill or some interest therein and who are too numerous to be made parties to this bill, and that all of said persons claim an interest in such lands so purchased under and by virtue of said grants to defendant, Southern Pacific Railroad Company, and said acts of March 3, 1887, February 12, 1896 and March 2, 1896, but the nature or extent of such claims are unknown to your orator, except as heretofore set forth, and your orator has joined as defendants those persons above named as representing such numerous purchasers, and which persons fairly represent said purchasers.

That heretofore, on the 7th day of January, 1898, another suit was depending in this Court brought by your orator against said Southern Pacific Railroad Company, and numbered 600, to vacate and annul patents to cer-

tain lands, including those lands described in Exhibit "B" annexed to this bill.

That said Southern Pacific Railroad Company filed answer therein and alleged in substance and effect that the said tracts of land (now shown by Exhibit "B" hereto) had been, prior to March 2, 1896, sold by said railroad company to purchasers in good faith and for value, and which purchasers were bona fide purchasers of said lands within the meaning of the facts of Congress, in that behalf, and thereafter, upon issue joined in said suits, the testimony of Jerome Madden, general land agent for said railroad company, was taken upon behalf or defendant, and who testified in substance and effect that those lands had been so sold by said company to purchasers in good faith and for value. Your orator, relying upon the truth of such averments and of such testimony as to those lands lands described in said Exhibit "B," dismissed from said case 600 the lands described in said Exhibit "B" without prejudice.

Wherefore, your orator alleges that said Southern Pacific Railroad Company ought to be and is estopped from denying that those lands described in said Exhibit "B" hereto were so sold by said company to purchasers in good faith and for value, and ought to be and is estopped from questioning the right of your orator to maintain this suit.

Your orator further alleges that it desires to avoid a multiplicity of suits and can only secure a full, adequate and complete remedy by this bill in equity.

Your orator further alleges that a controversy and dispute has arisen and still exists between your orator and defendant Southern Pacific Railroad Company as to the true meaning and interpretation of said acts of Congress

of July 27, 1866, June 28, 1870, March 3, 1871, March 3, 1887, February 12, 1896 and March 2, 1896, and as to the respective rights and obligations of your orator and said company and said acts.

Your orator contends that said acts of Congress constitute a valid contract between your orator and said railroad company whereby it was agreed and understood that where any land was erroneously certified or patented to said company and sold by said company to a bona fide purchaser that the United States had granted to and confirmed the title of the United States to such bona fide purchaser and not to or for the benefit of said railroad company, and that in such case it was further agreed and understood that said railroad company would account to and pay over to the United States the value of such land, not exceeding the Government price, and in case of a sale by executory contract where less than the Government price had been received would account to and pay over to the United States the amount received by said company upon such sales.

Your orator further alleges that such construction and interpretation of said acts is disputed by defendant railroad company, said company contending that it was not the title of the United States which was granted to and confirmed to such bona fide purchasers, but that the United States confirmed the title to lands so sold by said company to the said railroad company, which inured through it to such purchasers, and that said railroad company is not under any obligation in law or in equity to pay to the United States the Government price or any other price for said lands and that said company is still entitled and empowered to recover from such purchasers,

for the use and benefit of said company, the unpaid balance of the purchase price for such lands amounting to many thousands of dollars, and in pursuance of such claim said company has instituted and still is instituting numerous suits to enforce such contracts against numerous persons who have purchased such lands from said company upon executory contracts and where only a part of the purchase price has been paid, to the great embarrassment of your orator in the administration of the public lands.

Your orator further alleges that it expressly disclaims any purpose or desire to annul the title to any land held by a bona fide purchaser from said railroad company, but desires to ascertain what lands and what interest in lands have been sold by said railroad company to bona fide purchasers and what sum or sums are still owing to your orator by said company, to the end that patents to said lands not so sold may be annulled and that said railroad company may be required to account to and pay over to your orator the Government price of such lands as have been so sold, to the further end that your orator may protect and confirm the title of those bona fide purchasers who are entitled to receive a patent or confirmation of title from the United States by virtue of said acts of Congress of March 3, 1887 and March 2, 1896.

Your orator, having no plain, speedy and adequate remedy at law prays that the Court will determine the true construction of said acts of Congress and define the rights and obligations of your orator and of defendant railroad company thereunder and will determine the right and title of your orator to said lands described in said Exhibit "A" and will determine what of said lands

have been sold by defendant Southern Pacific Railroad Company to bona fide purchasers and will vacate and annul the patents for such of said lands as have not been sold by said company to bona fide purchasers, and quiet the title of your orator thereto.

That defendant Southern Pacific Railroad Company be enjoined from commencing, prosecuting or maintaining all suits and actions against any persons for the foreclosure of contract or recovery of purchase price for any lands described in Exhibit "A" to this bill.

That as to those lands which have been sold by said defendant Southern Pacific Railroad Company to bona fide purchasers the Court will require said railroad company to account to your orator for the value of such lands or such sum as has been received by said company from sales of said lands and pay over such sums to your orator or into this Honorable Court for the benefit of your orator.

Your orator further prays for such other and further relief as to the Court may seem equitable, and for costs of this suit. May it please your Honors to grant unto your orator a writ of subpoena issuing out of and under the seal of this Honorable Court directed to the defendants Southern Pacific Railroad Company and D. O. Mills and Homer S. King, Trustees, The Central Trust Company of New York, Trustee, and M. L. Wicks, Alice V. Slosson, Ivar A. Weid, James Mair, Pomona Land and Water Company, a corporation organized under the laws of California, T. Banbury, Burdett Chandler, H. H. Linville, J. R. Nevin, Henry M. Loud, William Thorpe, Fairmount Land and Water Company, a corporation organized under the laws of California, commanding them and

each of them, at a certain day and under a certain penalty therein to be inserted, personally to be and appear before your Honors in this Honorable Court and then and there to answer (but not under oath, answers under oath being hereby expressly waived) all and singular the premises and to stand to, perform and abide such order and decree therein as to your Honors shall seem meet.

And your orator will ever pray.

JOHN W. GRIGGS,
Attorney General,
JOSEPH H. CALL,
Special Assistant U. S. Attorney and Counsel for Plaintiff.

[Endorsed]: No. 2. In U. S. Circuit Court Southern District of Cal. United States vs. Southern Pacific R. R. Co., et al. Bill of Complaint. Joseph H. Call, Spl. Asst. U. S. Atty.

Plaintiff's Exhibit "A."

Showing lands erroneously patented by United States to Southern Pacific Company prior to March 2, 1896 (Dismissed from case 600).

The fractional N. E. ¼ of Sec. 5, T. 1 S., R. 6 W.

The N. W. ¼ of Sec. 9, T. 1 S., R. 6 W.

The N. ½ of Sec. 21, T. 1 S., R. 7 W.

The S. ½ of Sec, 21, T. 1 S., R. 7 W.

The E. ½ of N. E. ¼ and E. ½ of S. E. ¼ of Sec. 1, T. 1 S., R. 8 W.

The W. ½ of N. E. ¼, W. ½ of S. E. ¼ and W. ½ of Sec. 1, T. 1 S., R. 8 W.

All of Sec. 11, T. 1 S., R. 8 W.

All of fractional Sec. 15, T. 1 S., R. 8 W.

Lots 1 and 2 of Sec. 21, T. 1 S., R. 8 W.

The N. ½ of N. E. ¼ of Sec. 23, T. 1 S., R. 8 W.

Lots 1, 2, 3 and 4 of Sec. 25, T. 1 S., R. 8 W.

The S. ½ of S. E. ¼ and S. ½ of S. W. ¼ of Sec. 27, T. 1 S., R. 8 W.

Lots 6 and 7 of Sec. 33, T. 1 S., R. 9 W.

Lot 5 of Sec. 33, T. 1 S., R. 9 W.

The S. ½ of S. W. ¼ and Lots 1, 2, 3 and 4 of Sec. 35, T. 1 S., R. 9 W.

Lot 1 of Sec. 1, T. 1 S., R. 11 W.

Lot 1 of N. W. ¼ of Sec. 7, T. 1 S., R. 11 W.

Lot 5 of S. E. ¼ of Sec. 7, T. 1 S., R. 11 W.

Lot 6 of S. E. ¼ of Sec. 7, T. 1 S., R. 11 W.

Lots 7 and 8 of N. E. ¼ of Sec. 7, T. 1 S., R. 11 W.

The E. ½ of N. E. ¼ and Lot 6 of Sec. 13, T. 1 S., R. 11 W.

The W. ½ of N. E. ¼, E. ½ of N. W. ¼, N. ½ of S. W. ¼ and Lots 1, 2, 3, 4 and 5 of Sec. 13, T. 1 S., R. 11 W.

Lot 1 of Sec. 3, T. 1 S., R. 12 W.

Lot 5 of Sec. 3, T. 1 S., R. 12 W.

Lots 2 and 3 of Sec. 5, T. 1 S., R. 12 W.

The N. E. ¼ of Sec. 7, T. 1 S., R. 12 W.

N. E. ¼ of S. W. ¼ of Sec. 7, T. 1 S., R. 12 W.

Lots 3 and 4 of Sec. 7, T. 1 S., R. 12 W.

Lots 1 and 2 of Sec. 11, T. 1 S., R. 12 W.

The N. W. ¼ of N. W. ¼ of Sec. 11, T. 1 S., R. 12 W.

The S. E. ¼ of N. W. ¼ and N. E. ¼ of S. W. ¼ of Sec. 11, T. 1 S., R. 12 W.

The E. ½ of N. E. ¼ of Sec. 13, T. 1 S., R. 12 W.

The N. E. ¼ of Sec. 15, T. 1 S., R. 12 W.

The S. E. ¼ of S. E. ¼ and N. E. ¼ of Sec. 17, T. 1 S., R. 12 W.

The N. E. ¼ of S. E. ¼ of Sec. 17, T. 1 S., R. 12 W.

The N. ½ of S. E. ¼ of Sec. 19, T. 1 S. R. 12 W.

The N. W. ¼ of N. W. ¼ of Sec. 19, T. 1 S., R. 12 W.

The N. W. ¼ of S. W. ¼ and N. ½ of Sec. 29, T. 1 S., R. 12 W.

S. E. ¼ of Sec. 29, T. 1 S., R. 12 W.

The E. ½ of N. E. ¼, E. ½ of S. E. ¼ and N. W. ¼ of Sec. 31, T. 1 S., R. 12 W.

Lot 1 of Sec. 11, T. 1 S., R. 13 W.

The N. E. ¼ of N. E. ¼, S. E. ¼ of S. E. ¼ and Lots 1 and 4 of Sec. 13, T. 1 S., R. 13 W.

Lots 3 and 4 of Sec. 25, T. 1 S., R. 13 W.

Lot 10 of Sec. 3, T. 1 S., R. 14 W.

The S. ½ of N. E. ¼ of Sec. 3, T. 1 S., R. 14 W.

The E. ½ of S. E. ¼ and Lots 1 and 2 of Sec. 3, T. 1 S., R. 14 W.

The S. W. ¼ of N. W. ¼ and Lots 3, 4, 5 and 7 of Sec. 3, T. 1 S., R. 14 W.

The E. ½ of S. W. ¼, S. W. ¼ of S. W. ¼, E. ½ of N. E. ¼ and S. E. ¼ of Sec. 5, T. 1 S., R. 14 W.

The N. W. ¼ of S. W. ¼, W. ½ of N. E. ¼ and N. W. ¼ of Sec. 5, T. 1 S., R. 14 W.

The E. ½ of N. E. ¼ of Sec. 7, T. 1 S., R. 14 W.

The W. ½ of N. E. ¼ of Sec. 7, T. 1 S., R. 14 W.

The N. W. ¼ of Sec. 7, T. 1 S., R. 14 W.

The N. ½ of S. E. ¼ and Lot 3 of Sec. 7, T. 1 S., R. 14 W.

The S. W. ¼ of S. E. ¼ of Sec. 7, T. 1 S., R. 14 W.

N. W. ¼ of N. W. ¼ of Sec. 11, T. 1 S., R. 14 W.

The E. ½ of S. E. ¼ of Sec. 11, T. 1 S., R. 14 W.

The W. ½ of S. E. ¼ of Sec. 11, T. 1 S., R. 14 W.

Lots 1, 2, 3 & 4 of Sec. 23, T. 1 S., R. 14 W.

N. W. ¼ of Sec. 25, T. 1 S., R. 14 W.

Lot 1, S. E. ¼ of N. E. ¼, N. ½ of S. E. ¼, S. E. ¼ of S. E. ¼, and E. ½ of S. W. ¼ of Sec. 1, T. 1 S., R. 15 W.

The E. ½ of N. W. ¼, S. W. ¼ of N. E. ¼, and Lot 2 of Sec. 1, T. 1 S., R. 15 W.

The S. W. ¼ of S. E. ¼ of Sec. 1, T. 1 S., R. 15 W.

The S. W. ¼ of S. W. ¼ of Sec. 1, T. 1 S., R. 15 W.

The N. W. ¼ of S. W. ¼ of Sec. 1, T. 1 S., R. 15 W.

The W. ½ of S. E. ¼ and W. ½ of N. E. ¼ of Sec. 11, T. 1 S., R. 15 W.

The N. E. ¼ of S. E. ¼ and S. E. ¼ of N. E. ¼ of Sec. 11, T. 1 S., R. 15 W.

The N. E. ¼ of N. E. ¼ of Sec. 11, T. 1 S., R. 15 W.

S. ½ of N. W. ¼ and S. W. ¼ of Sec. 11 T. 1 S., R. 15 W.

The S. E. ¼ of S. E. ¼ of Sec. 11, T. 1 S., R. 15 W.

Lot 1 of Sec. 3, T. 2 S., R. 11 W.,

The N. E. ¼ of S. E. ¼ and S. ½ of S. E. ¼ of Sec. 9, T. 2 S., R. 11 W.

Lots 1 and 2 of Sec. 3, T. 2 S., R. 13 W.

Frac. of Lot 1 of Sec. 5, T. 2 S., R. 13 W.

Frac. of Lot 1 of Sec. 5, T. 2 S., R. 13 W.

The S. ½ of N. E. ¼ of Sec. 11, T. 2 S., R. 14 W.

The S. W. ¼ of Sec. 13, T. 2 S., R. 14 W.

All of fractional Sec. 17, T. 2 S., R. 14 W.

The S. W. ¼ of N. E. ¼, W. ½ of S. E. ¼ and W. ½ of Sec. 11, T. 1 N., R. 4 W.

The Frac. S. W. ¼ of Sec. 13, T. 1 N., R. 4 W.

The frac. N. W. ¼ of Sec. 27, T. 1 N., R. 5 W.

Lots 2 and 3 of N. E. ¼ of Sec. 27, T. 1 N., R. 5 W.

The frac'l S. E. ¼ of Sec. 27, T. 1 N., R. 5 W.

The S. W. ¼ of Sec. 27, T. 1 N., R. 5 W.

The W. ½ of S. W. ¼ of Sec. 9, T. 1 N., R. 6 W.

The W. ½ of Sec. 11, T. 1 N., R. 6 W.

The S. ½ of S. E. ¼ of Sec. 13 T. 1 N., R. 6 W.

The N. ½ of S. E. ¼ of Sec. 13, T. 1 N., R. 6 W.

The S. W. ¼ of Sec. 13, T. 1 N., R. 6 W.

The N. E. ¼ of Sec. 15, T. 1 N., R. 6 W.

The N. W. ¼ of Sec. 15, T. 1 N., R. 6 W.

The E. ½ of S. E. ¼ of Sec. 15, T. 1 N., R. 6 W.

The W. ½ of S. E. ¼ of Sec. 15, T. 1 N., R. 6 W.

The E. ½ of S. W. ¼ of Sec. 15, T. 1 N., R. 6 W.,

The E. ½ of N. E. ¼ of Sec. 17, T. 1 N., R. 6 W.

The E. ½ of N. E. ¼ and W. ½ of S. E. ¼ of Sec. 23, T. 1 N., R. 6 W.

The S. W. ¼ of N. E. ¼, S. E. ¼ of N. W. ¼ and S. W. ¼ of Sec. 23, T. 1N, R: 6 W.

The W. ½ of N. W. ¼ of Sec. 23, T. 1 N., R. 6 W.

The E. ½ of S. E. ¼ of Sec. 23, T. 1 N., R. 6 W.

The N. W. ¼ of N. W. ¼, N. E. ¼ of N. E. ¼, S. ½ of N. E. ¼, S. ½ of N. W. ¼ and S. ½ of Sec. 25, T. 1 N., R. 6 W.

The N. W. ¼ of N. E. ¼ and N. E. ¼ of N. W. ¼ of Sec. 25, T. 1 N., R. 6 W.

The N. W. ¼ of N. E. ¼ of Sec. 27, T. 1 N., R. 6 W.

The E. ½ of N. E. ¼ of Sec. 27, T. 1 N., R. 6 W.

The S. W. ¼ of N. E. ¼, N. W. ¼ of S. E. ¼ and N. W. ¼ of Sec. 27, T. 1 N., R. 6 W.

The E. ½ of N. E. ¼ of Sec. 27, T. 1 N., R. 6 W.

The S. W. ¼ of S. E. ¼ of Sec. 27, T. 1 N., R. 6 W.

The E. ½ of S. W. ¼ of Sec. 27, T. 1 N., R. 6 W.

The W. ½ of S. W. ¼ of Sec. 27, T. 1 N., R. 6 W.

The W. ½ of Sec. 29, T. 1 N., R. 6 W.

The E. ½ of S. E. ¼ of Sec. 29, T. 1 N., R. 6 W.

The W. ½ of S. E. ¼ of Sec. 29, T. 1 N., R. 6 W.

The E. ½ of N. E. ¼ of Sec. 31, T. 1 N., R. 6 W.

The N. ½ of S. W. ¼ and W. ½ of N. E. ¼ of Sec. 31, T. 1 N., R. 6 W.

The Frac. N. W. ¼ of Sec. 31, T. 1 N., R. 6 W.

The W. ½ of S. E. ¼ and S. ½ of S. W. ¼ of Sec. 31, T. 1 N., R. 6 W.

The S. E. ¼ of S. E. ¼ of Sec. 31, T. 1 N., R. 6 W.

The N. E. ¼ of S. E. ¼ of Sec 31, T. 1 N., R. 6 W.

The N. E. ¼ of Sec. 35, T. 1 N., R. 6 W.

The E. ½ of Sec. 35, T. 1 N., R. 6 W.

The N. W. ¼ of Sec. 35, T. 1 N., R. 6 W.

The S. W. ¼ of Sec. 35, T. 1 N., R. 6 W.

Lots 1 and 2 of Sec. 21, T. 1 N., R. 7 W.

Lots 3 and 4 of Sec. 21, T. 1 N., R. 7 W.

The frac. E. ½ of Sec. 27, T. 1 N., R. 7 W.

The N. W. ¼ of N. E. ¼, E. ½ of N. E. ¼, S. E. ¼ of S. E. ¼ and Lots 1, 2, 3 & 4 of Sec. 35, T. 1 N., R. 7 W.

The N. E. ¼ of N. W. ¼ of Sec. 13, T. 1 N., R. 8 W.

The S. E. ¼ of N. W. ¼ of Sec. 13, T. 1 N., R, 8 W.

The S. W. ¼ of N. W. ¼ of Sec. 13, T. 1 N., R. 8 W.

The N. W. ¼ of N. W. ¼ of Sec. 13, T. 1 N., R. 8 W.

The W. ½ of S. W. ¼ of Sec. 13, T. 1 N., R. 8 W.

The S. E. ¼ of Sec. 19, T. 1 N., R. 8 W.

The E. ½ of S. W. ¼ and S. E. ¼ of Sec. 21, T. 1 N., R. 8 W.

The S W. ¼ of S. W. ¼ of Sec. 21, T. 1 N., R. 8 W.

The N. W. ¼ of S. W. ¼ of Sec. 21, T. 1 N., R. 8 W.

The W. ½ of N. E. ¼ of Sec. 23, T. 1 N., R. 8 W.

The E. ½ of N. E. ¼ of Sec. 23, T. 1 N., R. 8 W.

Lots 1, 2 & 3, of Sec. 25, T. 1 N., R. 8 W.

The S. ½ of S. W. ¼ of Sec. 15, T. 1 N., R. 9 W.

The S. ½ of S. E. ¼ of Sec. 19, T. 1 N., R. 9 W.

The N. ½ of S. E. ¼ and S. W. ¼ of Sec. 21, T. 1 N., R. 9 W.

S. ½ of S. E. ¼ of Sec. 21, T. 1 N., R. 9 W.

The S. W. ¼ of S. W. ¼ of Sec. 15, T. 1 N., R. 10 W.

The E. ½ of N. E. ¼ and frac. S. E. ¼ of Sec. 19, T. 1 N., R. 10 W.

N. E. ¼ of S. W. ¼ and Lot 4 of Sec. 21, T. 1 N., R. 10 W.

The N. E. ¼ of N. E. ¼, and Lot 4 of Sec. 21, T. 1 N., R. 10 W.

The N. ½ of N. E. ¼ of Sec. 25, T. 1 N., R. 10 W.

The E. ½ of S. W. ¼, S. E. ¼ and Lot 2 of Sec. 7, T. 1 N., R. 11 W.

N. W. ¼ of N. W. ¼ of Sec. 13, T. 1 N., R. 11 W.

The E. ½ of S. W. ¼ of Sec. 13, T. 1 N., R. 11 W.

All frac. Sec. 15, T. 1 N., R. 15 W.

The S. ½ of N. E. ¼ of Sec. 17, T. 1 N., R. 11 W.

The S. E. ¼ of N. W. ¼ of Sec. 17, T. 1 N., R. 11 W.

The N. ½ of S. E. ¼ and Lots 3 and 4 of Sec. 17, T. 1 N., R. 11 W.

The N. W. ¼ of N. E. ¼ and Lots 3 and 4 of Sec. 23, T. 1 N., R. 11 W.

The S. W. ¼ of N. W. ¼ and Lot 1 of Sec. 23, T. 1 N., R. 11 W.

Lots 1 and 2 of N. E. ¼ of Sec. 3, T. 1 N., R. 12 W.

Lot 3 of N. W. ¼ of Sec. 3, T. 1 N., R. 12 W.

Lot 4 of N. W. ¼ of Sec. 3, T. 1 N., R. 12 W.

Lot 5 of Sec. 3, T. 1 N., R. 12 W.

The N. E. ¼ of S. E. ¼ of Sec. 3, T. 1 N., R. 12 W.

Lots 1, 8 and 9 of Sec. 5, T. 1 N., R. 12 W.

Lot 2 of Sec. 5, T. 1 N., R. 12 W.

Lots 3, 4, 5, 6 & 7 of Sec. 5, T. 1 N., R. 12 W.

Lots 1 and 2 of Sec. 11, T. 1 N., R. 12 W.

Lots 3, 4 & 5 of Sec. 11, T. 1 N., R. 12 W.

Lot 4 of Sec. 13, T. 1 N., R. 12 W.

Lots 1 and 2 of Sec. 13, T. 1 N., R. 12 W.

Lots 1, 2 & 3 of Sec. 3, T. 1 N., R. 14 W.

S. E. ¼ of N. W. ¼, S. W. ¼ of N. E. ¼, and N. E. ¼ of S. W. ¼ of Sec. 3, T. 1 N., R. 14 W.

The S. W. ¼ of N. W. ¼ and Lots 4 and 5 of Sec. 3, T. 1 N., R. 14 W.

The S. E. ¼ of Sec. 3, T. 1 N., R. 14 W.

The W. ½ of S. W. ¼ and S. E. ¼ of S. W. ¼ of Sec. 3, T. 1 N., R. 14 W.

Lots 1 and 2 of Sec. 5, T. 1 N., R. 14 W.

The frac. N. ½ of Sec. 9, T. 1 N., R. 14 W.

The frac. S. ½ of Sec. 9, T. 1 N., R. 14 W.

The W. ½ of N. W. ¼ and Lots 1, 2, 3 & 4 of Sec. 11, T. 1 N., R. 14 W.

Lot 1 of Sec. 15, T. 1 N., R. 14 W.

Lots 1, 2, 3 & 4 of Sec. 27, T. 1 N., R. 14 W.

The frac. S. W. ¼ of Sec. 31, T. 1 N., R. 14 W.

The frac. S. E. ¼ of Sec. 31, T. 1 N., R. 14 W.

The S. ½ of S. W. ¼ and Lots 1 & 2 of Sec. 33, T. 1 N., R. 14 W.

The S. ½ of S. E. ¼ and Lots 3 and 4 of Sec. 33, T. 1 N., R. 14 W.

The E. ½ of Sec. 35, T. 1 N., R. 14 W.

The N. W. ¼ of Sec. 3, T. 3 N., R. 19 W.

The E. ½ of N. E. ¼ of Sec. 5, T. 3 N., R. 19 W.

The N. ½ of S. E. ¼, S. W. ¼ and N. ½ of Sec. 15, T. 4 N., R. 19 W.

The S. ½ of S. E. ¼ of Sec. 15, T. 4 N., R. 19 W.

The E. ½ of N. E. ¼ and E. ½ of S. E. ¼ of Sec. 17, T. 4 N., R. 19 W.

The N. ½ and S. W. ¼ of Sec. 21, T. 4 N., R. 19 W.

The S. E. ¼ of Sec. 21, T. 4 N., R. 19 W.

The N. W. ¼ of Sec. 23, T. 4 N., R. 19 W.

The S. W. ¼ of Sec. 23, T. 4 N., R. 19 W.

The N. W. ¼ of N. W. ¼ of Sec. 25, T. 4 N., R. 19 W.

The N. W. ¼ of S. E. ¼, E. ½ of S. W. ¼ and S. W. ¼ of S. W. ¼ of Sec. 25, T. 4 N., R. 19 W.

The E. ½ of S. E. ¼ of Sec. 25, T. 4 N., R. 19 W.

The N. E. ¼ of Sec. 27, T. 4 N., R. 19 W.

The N. E. ¼ of N. W. ¼ and W. ½ of N. W. ¼ of Sec. 27, T. 4 N., R. 19 W.

The S. E. ¼ of N. W. ¼ of Sec. 27, T. 4 N., R. 19 W.

The E. ½ of N. E. ¼ and N. E. ¼ of S. E. ¼ of Sec. 29, T. 4 N., R. 19 W.

The S. E. ¼ of N. E. ¼ of Sec. 33, T. 4 N., R. 19 W.

Lots 2, 3 & 4 of Sec. 33, T. 4 N., R. 19 W.

The E. ½ of S. E. ¼ of Sec. 33, T. 4 N., R. 19 W.

The N. ½ of Sec. 7, T. 7 N., R. 13 W.

All of frac. Sec. 1, T. 7 N., R. 14 W.

All of frac. Sec. 3, T. 7 N., R. 14 W.

All of frac. Sec. 5, T. 7 N., R. 14 W.

The N. ½ of Sec. 7, T. 7 N., R. 14 W.

The N. ½ of Sec. 9, T. 7 N., R. 14 W.

The N. ½ of Sec. 11, T. 7 N., R. 14 W.

All of Sec. 1, T. 7 N., R. 15 W.

The N. ½ of Sec. 3, T. 7 N., R. 15 W.

The N. W. ¼ and Lot 2 of Sec. 5, T. 7 N., R. 15 W.

All San Bernardino Base and Meridian, California. Containing in the aggregate 30,062 79-100 acres.

Plaintiff's Exhibit "B."

Showing so much of lands embraced in Exhibit "A" hereto as were erroneously patented by United States to Southern Pacific Company prior to March 2, 1896, and which, prior to said date, had been sold by said company to bona fide purchasers.

The fractional N. E. ¼ of Sec. 5, T. 1 S., R. 6 W., containing 167 acres.

The N. W. ¼ of Sec. 9, T. 1 S., R. 6 W., containing 160 acres.

The N. ½ of Sec. 21, T. 1 S., R. 7 W., containing 320 acres.

The S. ½ of Sec. 21, T. 1 S., R. 7 W., containing 320 acres.

The E. ½ of N. E. ¼ and E. ½ of S. E. ¼ of Sec. 1, T. 1 S., R. 8 W., containing 160.04 acres.

The W. ½ of N. E. ¼, W. ½ of S. E. ¼ and W. ½ of Sec. 1, T. 1 S., R. 8 W., containing 480.56 acres.

All of Sec. 11, T. 1 S., R. 8 W., containing 640 acres.

All of fractional Sec. 15, T. 1 S., R. 8 W., containing 416 acres.

Lots 1 & 2 of Sec. 21, T. 1 S., R. 8 W., containing 32.10 acres.

The N. ½ of N. E. ¼ of Sec. 23, T. 1 S., R. 8 W., containing 80 acres.

Lots 1, 2, 3 & 4 of Sec. 25, T. 1 S., R. 8 W., containing 138.34 acres.

The S. ½ of S. E. ¼ and S. ½ of S. W. ¼ of Sec. 27, T. 1 S., R. 8 W., containing 160 acres.

Lots 6 & 7 of Sec. 33, T. 1 S., R. 9 W., containing 48.16 acres.

Lot 5 of Sec. 33, T. 1 S., R. 9 W., containing 31.79 acres.

The S. ½ of S. W. ¼ and lots 1, 2, 3 and 4 of Sec. 35, T. 1 S., R. 9 W., containing 176 acres.

Lot 1 of N. W. ¼ of Sec. 7, T. 1 S., R. 11 W., containing 40 acres.

Lot 5 of S. E. ¼ of Sec. 7, T. 1 S., R. 11 W., containing 10.83 acres.

Lot 6 of S. E. ¼ of Sec. 7, T. 1 S., R. 11 W., containing 10.65 acres.

Lots 7 and 8 of N. E. ¼ of Sec. 7, T. 1 S., R. 11 W., containing 20.76 acres.

The E. ½ of N. E. ¼ and Lot 6 of Sec. 13, T. 1 S., R. 11 W., containing 107.86 acres.

Lot 1 of Sec. 3, T. 1 S., R. 12 W., containing 17.31 acres.

Lot 5 of Sec. 3, T. 1 S., R. 12 W., containing 2.45 acres.

Lots 2 and 3 of Sec. 5, T. 1 S., R. 12 W., containing 6.87 acres.

The N. E. ¼ of Sec. 7, T. 1 S., R. 12 W., containing 160 acres.

N. E. ¼ of S. W. ¼ of Sec. 7, T. 1 S., R. 12 W., containing 40 acres.

Lots 3 and 4 of Sec. 7, T. 1 S., R. 12 W., containing 83.16 acres.

Lots 1 and 2 of Sec. 11, T. 1 S., R. 12 W., containing 34.40 acres.

The N. W. ¼ of N. W. ¼ of Sec. 11, T. 1 S., R. 12 W., containing 40 acres.

The S. E. ¼ of N. W. ¼ and N. E. ¼ of S. W ¼ of Sec. 11, T. 1 S., R. 12 W., containing 80 acres.

The E. ½ of N. E. ¼ of Sec. 13, T. 1 S., R. 12 W., containing 80 acres.

The N. E. ¼ of Sec. 15, T. 1 S., R. 12 W., containing 160 acres.

The S. E. ¼ of S. E. ¼ and N. E. ¼ of Sec. 17, T. 1 S., R. 12 W., containing 200 acres.

The N. E. ¼ of S. E. ¼ of Sec. 17, T. 1 S., R. 12 W., containing 40 acres.

The N. ½ of S. E. ¼ of Sec. 19, T. 1 S., R. 12 W., containing 80 acres.

The N. W. ¼ of N. W. ¼ of Sec. 19, T. 1 S., R. 12 W., containing 42.87 acres.

The N. W. ¼ of S. W. ¼ and N. ½ of Sec. 29, T. 1 S., R. 12 W., containing 360 acres.

S. E. ¼ of Sec. 29, T. 1 S., R. 12 W., containing 160 acres.

The E. ½ of N. E. ¼, E. ½ of S. E. ¼ and N. W. ¼ of Sec. 31, T. 1 S., R. 12 W., containing 327.61 acres.

Lots 3 & 4 of Sec. 25, T. 1 S., R. 13 W., containing 18.57 acres.

Lot 10 of Sec. 3, T. 1 S., R. 14 W., containing 40.66 acres.

The S. ½ of N. E. ¼ of Sec. 3, T. 1 S., R. 14 W., containing 80 acres.

The E. ½ of S. E. ¼ and Lots 1 & 2 of Sec. 3, T. 1 S., R. 14 W., containing 124.53 acres.

The S. W. ¼ of N. W. ¼ and Lots 3, 4, 5 & 7 of Sec. 3, T. 1 S., R. 14 W., containing 139.32 acres.

The E. ½ of S. W. ¼, S. W. ¼ of S. W. ¼, E. ½ of N. E. ¼ and S. E. ¼ of Sec. 5, T. 1 S., R. 14 W., containing 360.18 acres.

The N. W. ¼ of S. W. ¼, W. ½ of N. E. ¼ and N. W. ¼ of Sec. 5, T. 1 S., R. 14 W., containing 280.36 acres.

The E. ½ of N. E. ¼ of Sec. 7, T. 1 S., R. 14 W., containing 80 acres.

The W. ½ of N. E. ¼ of Sec. 7, T. 1 S., R. 14 W., containing 80 acres.

The N. W. ¼ of Sec. 7, T. 1 S., R. 14 W., containing 160.44 acres.

The N. ½ of S. E. ¼ and Lot 3 of Sec. 7, T. 1 S., R. 14 W., containing 113.33 acres.

The S. W. ¼ of S. E. ¼ of Sec. 7, T. 1 S., R. 14 W., containing 40 acres.

N. W. ¼ of N. W. ¼ of Sec. 11, T. 1 S., R. 14 W., containing 40 acres.

The E. ½ of S. E. ¼ of Sec. 11, T. 1 S., R. 14 W., containing 80 acres.

The W. ½ of S. E. ¼ of Sec. 11, T. 1 S., R. 14 W., containing 80 acres.

Lots 1, 2, 3 & 4 of Sec. 23, T. 1 S., R. 14 W., containing 51.12 acres.

The N. W. ¼ of Sec. 25, T. 1 S., R. 14 W., containing 160 acres.

Lot 1—S. E. ¼ of N. E. ¼, N. ½ of S. E. ¼, S. E. ¼ of S. E. ¼ and E. ½ of S. W. ¼ of Sec. 1, T. 1 S., R. 15 W., containing 280 acres.

The S. W. ¼ of S. E. ¼ of Sec. 1, T. 1 S., R. 15 W., containing 40 acres..

The W. ½ of S. E. ¼ and W. ½ of N. E. ¼ of Sec. 11, T. 1 S. R. 15 W., containing 160 acres.

The N. E. ¼ of S. E. ¼ and S. E. ¼ of N. E. ¼ of Sec. 11, T. 1 S., R. 15 W., containing 80 acres.

S. ½ of N. W. ¼ and S. W. ¼ of Sec. 11, T. 1 S., R. 15 W., containing 240 acres.

The S. E. ¼ of S. E. ¼ of Sec. 11. T. 1 S., R. 15 W., containing 40 acres.

Lot 1 of Sec. 3, T. 2 S., R. 11 W., containing 21.35 acres.

The N. E. ¼ of S. E. ¼ and S. ½ of S. E. ¼ of Sec. 9, T. 2 S., R. 11 W., containing 120 acres.

Lots 1 & 2 of Sec. 3, T. 2 S., R. 13 W., containing 4 acres.

Fraction of Lot 1 of Sec. 5, T. 2 S., R. 13 W., containing .07 acres.

Fraction of Lot 1 of Sec. 5, T. 2 S., R. 13 W., containing .26 acres.

The S. ½ of N. E. ¼ of Sec. 11, T. 2 S., R. 14 W., containing 80 acres.

The S. W. ¼ of Sec. 13, T. 2 S., R 14 W., containing 160 acres.

All of fractional Sec. 17, T. 2 S., R. 14 W., containing 392.59 acres.

The S. W. ¼ of N. E. ¼; W. ½ of S. E. ¼ and W. ½ of Sec. 11, T. 1 N., R. 4 W., containing 440 acres.

The fractional S. W. ¼ of Sec. 13, T. 1 N., R. 4 W., containing 113.54 acres.

The fractional S. E. ¼ of Sec. 27, T. 1 N., R. 5 W., containing 159.99 acres.

The W. ½ of S. W. ¼ of Sec. 9, T. 1 N., R. 6 W., containing 80 acres.

The W. ½ of Sec. 11, T. 1 N., R. 6 W., containing 320 acres.

The N. E. ¼ of Sec. 15, T. 1 N., R. 6 W., containing 160 acres.

The N. W. ¼ of Sec. 15, T. 1 N., R. 6 W., containing 160 acres.

The E. ½ of S. E. ¼ of Sec. 15, T. 1 N., R. 6 W., containing 80 acres.

The W. ½ of S. E. ¼ of Sec. 15, T. 1 N., R. 6 W., containing 80 acres.

The E. ½ of S. W. ¼ of Sec. 15, T. 1 N., R. 6 W., containing 80 acres.

The W. ½ of S. W. ¼ of Sec. 15, T. 1 N., R. 6 W., containing 80 acres.

The S. W. ¼ of N. E. ¼, S. E. ¼ of N. W. ¼ and S. W. ¼ of Sec. 23, T. 1 N., R. 6 W., containing 240 acres.

The N. W. ¼ of N. E. ¼ and N. E. ¼ of N. W. ¼ of Sec. 25, T. 1 N., R. 6 W., containing 80 acres.

The N. W. ¼ of N. E. ¼ of Sec. 27, T. 1 N., R. 6 W., containing 40 acres.

The S. W. ¼ of N. E. ¼; N. W. ¼ of S. E. ¼ and N. W. ¼ of Sec. 27, T. 1 N., R. 6 W., containing 240 acres.

The S. W. ¼ of S. E. ¼ of Sec. 27, T. 1 N., R. 6 W., containing 40 acres.

The E. ½ of S. E. ¼ of Sec. 29, T. 1 N., R. 6 W., containing 80 acres.

The E. ½ of N. E. ¼ of Sec. 31, T. 1 N., R. 6 W., containing 80 acres.

Lots 1 & 2 of Sec. 21, T. 1 N., R. 7 W., containing 68.28 acres.

Lots 3 & 4 of Sec. 21, T. 1 N., R. 7 W., containing 68.28 acres.

The fractional E. ½ of Sec. 27, T. 1 N., R. 7 W., containing 173.48 acres.

The N. W. ¼ of N. E. ¼, E. ½ of N. E. ¼, S. E. ¼ of S. E. ¼ and Lots 1, 2, 3 & 4 of Sec. 35, T. 1 N., R. 7 W., containing 165.88 acres.

The N. E. ¼ of N. W. ¼ of Sec. 13, T. 1 N., R. 8 W., containing 40 acres.

The S. E. ¼ of N. W. ¼ of Sec. 13, T. 1 N., R. 8 W., containing 40 acres.

The S. W. ¼ of N. W. ¼ of Sec. 13, T. 1 N., R. 8 W., containing 40 acres.

The N. W. ¼ of N. W. ¼ of Sec. 13, T. 1 N., R. 8 W., containing 40 acres.

The W. ½ of S. W. ¼ of Sec. 13, T. 1 N., R. 8 W., containing 80 acres.

The S. E. ¼ of Sec. 19, T. 1 N., R. 8 W., containing 160 acres.

The S. W. ¼ of S. W. ¼ of Sec. 31, T. 1 N., R. 8 W., containing 40 acres.

The N. W. ¼ of S. W. ¼ of Sec. 21 T. 1 N., R. 8 W., containing 40 acres.

The E. ½ of N. E. ¼ of Sec. 23, T. 1 N., R. 8 W., containing 80 acres.

The S. W. ¼ of S. W. ¼ of Sec. 15, T. 1 N., R. 10 W., containing 40 acres.

N. E. ¼ of S. W. ¼ and Lot 3 of Sec. 21, T. 1 N., R. 10 containing 75.55 acres.

The E. ½ of S. W. ¼; S. E. ¼ and Lot 2 of Sec. 7, T. 1 N., R. 11 W., containing 283.75 acres.

The S. E. ¼ of N. W. ¼ of Sec. 17, T. 1 N., R. 11 W., containing 40 acres.

The N. ½ of S. E. ¼ and Lots 3 & 4 of Sce. 17, T. 1 N., R. 11 W., containing 108.77 acres.

The N. W. ¼ of N. E. ¼ and Lots 3 & 4 of Sec. 23, T. 1 N., R. 11 W., containing 103.49 acres.

The S. W. ¼ of N. W. ¼ and Lot 1 of Sec. 23, T. 1 N., R. 11 W., containing 58.62 acres.

Lots 1 & 2 of N. E. ¼ of Sec. 3, T. 1 N., R. 12 W., containing 80 acres.

Lot 3 of N. W. ¼ of Sec. 3, T. 1 N., R. 12 W., containing 39.88 acres.

Lot 4 of N. W. ¼ of Sec. 3, T. 1 N., R. 12 W., containing 40.24 acres.

Lot 5 of Sec. 3, T. 1 N., R. 12 W., containing 20.16 acres.

The N. E. ¼ of S. E. ¼ of Sec. 3, T. 1 N., R. 12 W., containing 40 acres.

Lots 1, 8 and 9 of Sec. 5, T. 1 N., R. 12 W., containing 76.20 acres.

Lot 2 of Sec. 5, T. 1 N., R. 12 W., containing 40 acres.

Lots 3, 4, 5, 6 & 7 of Sec. 5, T. 1 N., R. 12 W., containing 148.28 acres.

Lots 1 & 2 of Sec. 11, T. 1 N., R. 12 W., containing 36.65 acres.

Lots 3, 4, & 5 of Sec. 11, T. 1 N., R. 12 W., containing 95.10 acres.

Lot 4 of Sec. 13, T. 1 N., R. 12 W., containing 23.06

Lots 1 & 2 of Sec. 13, T. 1 N., R. 12 W., containing 47.20 acres.

Lots 1, 2 & 3 of Sec. 3, T. 1 N., R. 14 W., containing 99.77 acres.

S. E. ¼ of N. W. ¼, S. W. ¼ of N. E. ¼, and N. E. ¼ of S. W. ¼ of Sec. 3, T. 1 N., R. 14 W., containing 120 acres.

The S. W. ¼ of N. W. ¼ and Lots 4 and 5 of Sec. 3, T. 1 N., R. 14 W., containing 120 acres.

The S. E. ¼ of Sec. 3, T. 1 N., R. 14 W., containing 160 acres.

The W. ½ of S. W. ¼ and S. E. ¼ of S. W. ¼ of Sec. 3, T. 1 N., R. 14 W., containing 120 acres.

The fractional N. ½ of Sec. 9, T. 1 N., R. 14 W., containing 282.22 acres.

The fractional S. ½ of Sec. 9. T. 1 N., R. 14 W., containing 260.02 acres.

The W. ½ of N. W. ¼ and Lots 1, 2, 3 & 4 of Sec. 11, T. 1 N., R. 14 W., containing 134.24 acres.

Lot 1 of Sec. 15, T. 1 N., R. 14 W., containing 2.92 acres.

Lots 1, 2, 3 & 4 of Sec. 27, T. 1 N., R. 14 W., containing 78.49 acres.

The E. ½ of N. E. ¼ of Sec. 5, T. 3 N., R. 19 W., containing 79.05 acres.

The N ½ of S. E. ¼; S. W. ¼ and N. ½ of Sec. 15, T. 4 N., R. 19 W., containing 560 acres.

San Bernardino Base and Meridian.

Containing in the aggregate 16,152.56 acres.

[Endorsed]: No. 878. In U. S. Circuit Court, Southern Dist. Cal. United States v. Southern Pacific Railroad Co., et al. Bill. Filed Apr. 13, 1899. Wm. M. Van Dyke, Clerk. Chas. N. Williams, Deputy. Joseph H. Call, Spl. U. S. Atty.

In the United States Circuit Court, Southern District of California, Ninth Circuit.

UNITED STATES, Plaintiff,
vs.
THE SOUTHERN PACIFIC RAILROAD COMPANY, and Others, Defendants.
No. 878.

Amendment to Bill of Complaint.

The United States, by the Attorney General thereof, files this its amendment to its bill of complaint herein by inserting after the end of line 24, page 17 of said bill, the following:

Your orator shows unto the Court that the determination of the rights of your orator in the premises involves the construction and interpretation of numerous acts of Congress and the validity of numerous contracts and instruments in writing executed by defendant Southern Pacific Railroad Company to numerous persons, and the construction and effect of numerous maps of location filed in the Interior Department by the railroad companies hereinbefore mentioned, and of numerous orders, rulings and decisions of the Interior Department, and

in securing to your orator an accounting from defendant Southern Pacific Railroad Company there is great complexity involved in determining what tracts of land have been contracted to be sold by said company and at what price and to whom, and what amount has been paid by way of principal and interest on each of said tracts to said company, and the good faith of the purchasers of such numerous tracts.

Your orator requires defendant Southern Pacific Railroad Company to show to the best of its knowledge, information and belief, and after an examination of its books and records, but not upon oath, the benefit whereof is hereby waived, the following:

(1.) Said company is required to state what sales or contracts to sell it has made of each of the tracts of land described in Exhibit "A" hereto, with the name of the purchaser of each tract and the name of each assignee or transferee of such tracts or of any contract given therefor by said company.

(2.) The date of each such sale or contract to sell and the character of the instrument in writing, if any, given by said company to each such purchaser.

(3.) The agreed purchase price of each such tract.

(4) The date and amount of each payment of principal and of interest upon each of such sales made by such several purchasers to said company.

JOSEPH H. CALL,
Special U. S. Attorney.

[Endorsed]: No. 878. In U. S. Circuit Court, Southern Dist. Cal. United States vs. Southern Pacific Railroad

Co., et al. Amendment to Bill. Filed Apr. 13, 1899. Wm. M. Van Dyke, Clerk. Chas. N. Williams, Deputy. Joseph H. Call, Special .U S. Attorney.

Subpoena ad Respondendum.

UNITED STATES OF AMERICA.

Circuit Court of the United States, Ninth Circuit, Southern District of California

IN EQUITY.

The President of the United States of America, Greeting, To Southern Pacific Railroad Company, D. O. Mills and Homer S. King, Trustees, The Central Trust Company of New York, Trustee, and M. L. Wicks, Alice V. Slosson, Ivar A. Weid, James Mair, Pomona Land and Water Company, a corporation organized under the laws of California, T. Banbury, Burdett Chandler, H. H. Linville, J. R. Nevin, Henry M. Loud, William Thorpe, Fairmount Land and Water Company, a corporation organized under the laws of California:

You are hereby commanded, that you be and appear in said Circuit Court of the United States aforesaid, at the courtroom in Los Angeles, on the fifth day of June A. D. 1899, to answer a bill of complaint exhibited against you in said Court by The United States, and to do and re-

ceive what the said Court shall have considered in that behalf. And this you are not to omit, under the penalty of five thousand dollars.

Witness, The Honorable MELVILLE W. FULLER, Chief Justice of the Supreme Court of the United States, this 13th day of April in the year of our Lord one thousand eight hundred and ninety-nine, and of our Independence the one hundred and twenty-third.

[Seal] WM. M. VAN DYKE,
Clerk.
By E. H. Owen,
Deputy Clerk.

Memorandum Pursuant to Rule 12, Supreme Court U. S.

You are hereby required to enter your appearance in the above suit, on or before the first Monday of June next, at the clerk's office of said Court pursuant to said bill; otherwise the said bill will be taken pro confesso.

WM. M. VAN DYKE,
Clerk.
By E. H. Owen,
Deputy Clerk.

United States Marshal's Office,
Southern District of California.

I hereby certify, that I received the within writ on the 25th day of April, 1899, and personally served the same on the 25th day of April and 10th day of May, 1899, on

Burdette Chandler, M. L. Wicks, Alice V. Slosson and Ivar A. Weid—The Pomona Land and Water Co. and Fairmount Land and Water Co., by delivering to and leaving with Burdette Chandler M. L. Wicks, Alice V. Slosson and Ivar A. Weid, B. S. Nichols, President Pomona Land and Water Co., and E. M. Durant, Secretary Fairmount Land and Water Co., said defendants named therein each personally, at the county of Los Angeles in said district a copy thereof; that after due and diligent search and inquiry I have been unable to find D. O. Mills and Homer S. King, Trustees, James Mair, T. Banbury, H. H. Linville, J. R. Nevin, Henry M. Loud, William Thorpe, in this District; that, after due and diligent search and inquiry I have been unable to find any officer or managing agent of the following corporations, to wit: Southern Pacific Railroad Company, the Central Trust Co. of New York, Trustee, or of either of them, in this said district, upon whom this writ could be served.

Los Angeles, June 5, 1899.

H. Z. OSBORNE,
U. S. Marshal.
By G. F. McCulloch,
Deputy.

[Endorsed]: No. 878. U. S. Circuit Court, Ninth Circuit, Southern District of California. In Equity. The United States vs. Southern Pacific Railroad Company, et al. Subpoena. Filed June 15, 1899. Wm. M. Van Dyke, Clerk. Chas. N. Williams, Deputy.

Subpoena ad Respondendum.

UNITED STATES OF AMERICA.

Circuit Court of the United States, Ninth Circuit, Southern District of California

IN EQUITY

The President of the United States of America, Greeting, to Southern Pacific Railroad Company, D. O. Mills and Homer S. King, Trustees, The Central Trust Company of New York, Trustee, and M. L. Wicks, Alice V. Slosson, Ivar A. Weid, James Mair, Pomona Land and Water Company, a corporation organized under the laws of California, T. Banbury, Burdett Chandler, H. H. Linville, J. R. Nevin, Henry M. Loud, William Thorpe, Fairmount Land and Water Company, a corporation organized under the laws of California.

You are hereby commanded, that you be and appear in said Circuit Court of the United States aforesaid, at the courtroom in Los Angeles, on the fifth day of June, A. D. 1899, to answer a bill of complaint exhibited against you in said court by The United States, and to do and receive what the said Court shall have considered in that behalf. And this you are not to omit, under the penalty of five thousand dollars.

Witness, the Honorable MELVILLE W. FULLER, Chief Justice of the Supreme Court of the United States, this 13th day of April in the year of our Lord one thousand

eight hundred and ninety-nine, and of our Independence the one hundred and twenty-third.

[Seal] WM. M. VAN DYKE,
Clerk.
By E. H. Owen,
Deputy Clerk.

Memorandum Pursuant to Rule 12, Supreme Court, U. S.

You are hereby required, to enter your appearance in the above suit, on or before the first Monday of June, next, at the clerk's office of said Court pursuant to said bill; otherwise the said bill will be taken pro confesso.

WM. M. VAN DYKE,
Clerk.
By E. H. Owen,
Deputy Clerk.

Pursuant to Sec. 740 R. S. U. S., I, Wm. M. Van Dyke, clerk of the Circuit Court of the United States for the Southern District of California, hereby certify the foregoing to be a duplicate of an original writ of subpoena issued out of my office on April 12th, 1899, in the cause entitled, The United States vs. Southern Pacific Railroad Company, et al., No. 878.

[Seal] WM. M. VAN DYKE,
Clerk U. S. Circuit Court, Southern District of California.
E. H. Owen,
Deputy.

[U. S. Int. Rev. Stamp, 10c, canceled.]

United States of America,
Northern District of California. } ss.

I hereby certify and return that I served the annexed writ on the therein-named Homer S. King, by handing to and leaving a true and correct copy thereof with Homer S. King, personally, at San Francisco in said District on the 22d day of April, A. D. 1899.

JOHN H. SHINE,
U. S. Marshal.
By T. H. Gallagher,
Office Deputy.

United States Marshal's Office,
Northern District of California. }

I hereby certify, that I received the within writ on the 17th day of April, 1899, and personally served the same on the 17th day of April, 1899, on Southern Pacific Railroad Company by delivering to and leaving with E. C. Wright, Secretary of Southern Pacific Railroad Company said defendant named therein, personally, at the county of San Francisco in said district a certified copy thereof.

San Francisco, April 17, 1899.

JOHN H. SHINE,
U. S. Marshal.
By T. J. Gallagher,
Office Deputy.

[Endorsed]: No. 878. U. S. Circuit Court, Ninth Circuit, Southern District of California. In Equity. The United States vs. Southern Pacific Railroad Company, et al. Duplicate Subpoena. Filed Apr. 25, 1899. Wm. M. Van Dyke, Clerk, Chas. N. Williams, Deputy.

In the Circuit Court of the United States, Ninth Circuit, Southern District of California.

THE UNITED STATES,
Complainant,
vs.
THE SOUTHERN PACIFIC RAILROAD COMPANY et al.,
Defendants.
Case No. 878.

Answer of Alice V. Slosson.

The answer of Alice V. Slosson, one of the defendants, to the bill of complaint of The United States, Complainant.

This defendant, now and at all times hereafter, saving to herself all and all manner of benefit or advantage of exception or otherwise that can or may be had or taken to the many errors, uncertainties and imperfections in the said bill contained, for answer thereto, or to so much thereof as this defendant is advised it is material or necessary for her to make answer to, answering, says:

I. That in the month of November, A. D. 1880, this defendant, in good faith, and for a valuable consideration; and believing that defendants, the Southern Pacific Railroad Company, and its grantees, D. O. Mills and others, then owned by absolute title in fee simple and had full right to sell and convey the lands hereinafter described, bargained for, purchased, paid for and received from said defendants a deed of conveyance of those certain lots, pieces and parcels of land situated, lying and being in the county of Los Angeles, State of Caliornia, and par-

ticularly known and numbered as lots number one (1) and two (2) in the northeast ¼ of section eleven (11) in township one (1) south of range twelve (12) West S. B. B. & M., containing thirty-four and four-tenths (34.4) acres of land according to the United States Surveys, together with all the privileges and appurtenances thereunto appertaining and belonging.

II. And this defendant is advised and believes and on such advice and belief avers that she was and is a bona fide purchaser of said lands within the meaning of the acts of Congress in that behalf, cited in complainant's bill of complaint; and she further alleges that she has not submitted a claim for confirmation of her title to said lands to the Secretary of the Interior.

All of which matters and things this defendant is ready and willing to aver, maintain and prove, as this honorable Court shall direct; and she humbly prays a decree of this Court confirming title in her to said lands hereinbefore described, and for her costs herein incurred, and for such other, further and general relief in the premises as to equity and justice may appertain.

T. M. STEWART,
Solicitor for said Defendant.

United States of America,
State of California, } ss.
County of Los Angeles.

Alice V. Slosson, makes solemn oath and says: I am the above-named defendant. So much of the foregoing answer concerns my own acts and deeds is true to the best of my own knowledge; and so much thereof as con-

cerns the acts of any other person or persons I believe to be true. ALICE V. SLOSSEN.

Sworn to before me this 3d day of June, 1899.

[Seal] R. W. DARBY,

Notary Public in and for the County of Los Angeles, State of California.

[U. S. Int. Rev. 10c, canceled.]

[Endorsed]: No. 878. In the Circuit Court of the United States, Ninth Circuit, Southern District of California. The United States, Complainant, vs. The Southern Pacific Railroad Company et al., Defendants. Answer of the Defendant Alice V. Slosson. Received copy June 5, 1899. Joseph H. Call, Spl. U. S. Atty. Filed June 5th, 1899. Wm. M. Van Dyke, Clerk. By E. H. Owen, Deputy. Filed June 5, 1899. Wm. M. Van Dyke, Clerk. Chas N. Williams, Deputy. T. M. Stewart, Solicitor for said Defendant.

In the Circuit Court of the United States, Ninth Circuit, Southern District of California.

THE UNITED STATES, Plaintiff,

vs.

THE SOUTHERN PACIFIC RAILROAD COMPANY et al., Defendants.

Case No. 878.

Joint and Several Answer of Southern Pacific Railroad Company, et al.

The joint and several answer of the defendants Southern Pacific Railroad Company, Homer S. King, trustee, M. L.

Wicks, Alice V. Slosson, Ivar A. Weid, James Mair Pomona Land and Water Company, T. Banbury, B. Chandler, H. H. Linville, J. R. Nevin, Henry M. Loud, William Thorpe, and Fairmount Land and Water Company, to the bill of complaint of the plaintiff herein.

The above-named defendants, respectively, now and all times saving to themselves all and all manner of benefit and advantage of exception or otherwise that can be had or taken to the many errors, uncertainties and imperfections in the said bill of complaint, for answer thereto, or to so much thereof as these defendants are advised it is material or necessary for them to make answer to, jointly and severally:

1.

Par. 1. Allege that on March 2d, 1865, the defendant Southern Pacific Railroad Company was duly incorporated and organized under the general laws of the State of California, as a railroad corporation under the name and style of Southern Pacific Railroad Company; and the said defendant became thereby duly authorized and empowered to, among other things, construct, own, maintain and operate railroads from the Bay of San Francisco, in the State of California, thence into and through the counties of Santa Clara, Monterey, San Luis Obispo, Tulare, Los Angeles and San Diego, to the Colorado River.

Par. 2. Allege that section 18 of the act of Congress approved on July 27th, 1866, entitled "An act granting lands to aid in the construction of a railroad and telegraph line from the States of Missouri and Arkansas to the Pacific Coast", also authorized and empowered the defendant Southern Pacific Railroad Company to construct, own, maintain and operate a railroad to connect

with the railroad of the Atlantic & Pacific Railroad Company, formed under that act, at such point near the boundary line of the State of California as they should deem most suitable for a railroad to San Francisco, and extend from such point to San Francisco. The said act, as printed in volume 14, United States Statutes, at page 292 and following, is referred to, and the whole thereof made part of this answer.

Par. 3. Allege that to aid in the construction of the railroad, which it authoried and empowered the defendant Southern Pacific Railroad Company to construct, the the said act of July 27th, 1866, granted to the defendant Southern Pacific Railroad Company, and authorized it to take title to and own, every alternate section of public land, not mineral, designated by odd numbers, to the amount of ten such sections per mile on each side of the said railroad, to which the United States have full title, not reserved, sold, granted or otherwise appropriated, and free from preemption or other claims or rights at the time the line of said road should be designated by a plat thereof, filed in the office of the Commissioner of the General Land Office; and the said grant further provided, that in case any of said sections or pats of sections were found to have been granted, sold, reserved, occupied by homestead settlers, pre-empted, or otherwise disposed of, other lands should be selected by said company in lieu thereof, under the direction of the Secretary of the Interior, in alternate sections designated by odd numbers, not more than ten miles beyond the limits of the first mentioned odd sections.

Par. 4. Allege that the defendant Southern Pacific Railroad Company duly accepted the terms, conditions

and impositions of the said act of July 27th, 1866, and signified the same in writing, under its corporate seal, duly executed pursuant to the direction of its board of directors first had and obtained; which acceptance was made on or about November 26th, 1866, and was deposited and filed in the office of the Secretary of the Interior on December 21st, 1866.

Par. 5. Allege that prior to January 3d, 1867, the defendant Southern Pacific Railroad Company fixed the general route of the railroad contemplated by section 18 of the said act of July 27th 1866; and on January 3d, 1867, the said company, with full right and authority so to do, duly filed with the Secretary of the Interior a map designating the line and route of said road—and on the last mentioned date the Secretary of the Interior, with full authority, duly accepted and filed the said map, and forwarded the same to the Commissioner of the General Land Office, with direction that he give the same appropriate official action. And these defendants deny that the defendant Southern Pacific Railroad Company's claim of right to file the said map was refused recognition, or repudiated, by the, or any, officers of the Interior Department, during the years 1867, 1868, 1869 or at any time; and deny that the said map was filed without authority so to do, or that on January 3d, 1867, the then Secretary of the Interior adjudged that the said map represented a line of route not authorized by the charter of the said company, the laws of California, or section 18 of the said act of July 27th, 1866. But these defendants admit that during the year 1868, more than a year after the said map had been filed and accepted as aforesaid, the then Secre-

tary of the Interior rendered an opinion that the defendant Southern Pacific Railroad Company was not authorized to construct a railroad along the line contemplated by section 18 of the said act of July 27th, 1866, and shown on the said map filed January 3d, 1867; and allege that the said opinion, rendered as aforesaid in 1868, was reversed by the Secretary of the Interior during the same year, and again during each of the years 1869 and 1870.

Par. 6. Allege that on March 22d, 1867, the Commissioner of the General Land Office, under direction of the Secretary of the Interior, withdrew all the odd-numbered sections of land lying within thirty miles on each side of the line of route shown on the said map filed on January 3d, 1867, from pre-emption and homestead entry, sales and other disposition by the United States; and such sections have remained so withdrawn continuously since January 3d, 1867, to the present time, by force and effect of the said withdrawal, and of section 6 of the said act of July 27th, 1866.

Par. 7. Allege that by section 2 of an act entitled "An act relative to filing reports of railroad companies," approved on June 25th, 1868, Congress recognized the defendant Southern Pacific Railroad Company as, and declared it to be, a corporation created by the provisions of the said act of July 27th, 1866; which act of June 25th, 1868, as printed in volume 15, page 79, and following, of the United States Statutes, is referred to and the whole thereof made part of this answer.

Par. 8. Allege that prior to the year 1869, the San Francisco & San Jose Railroad Company, a corporation theretofore duly incorporated and organized under the laws of the State of California, and duly authorized to

construct, own, maintain and operate a railroad through the City and County of San Francisco to the City of San Jose, constructed and fully equipped a railroad from the City of San Francisco to the City of San Jose, along the line designated by the defendant Southern Pacific Railroad Company on its plat filed January 3d, 1867, referred to in paragraph 5 of this subdivision hereof.

Par. 9. Allege that prior to May 1st, 1869, the defendant Southern Pacific Railroad Company constructed and fully equipped that section of its railroad, along the line designated on the said plat of January 3d, 1867, which connects and makes one continuous line with the railroad mentioned in the next preceeding paragraph hereof, and extends from the point of the junction therewith in the City of San Jose, to the town of Gilroy, a distance of 30.26 miles; and by continuous work, during the year 1869 and 1870, the defendant Southern Pacific Railroad Company constructed and fully equipped that further portion of its railroad, along the line designated upon the said plat of January 3d, 1867, commencing at the terminus of the before-mentioned section of the road at Gilroy and extending therefrom to the town of Tres Pinos, a distance of more than twenty miles.

Par. 10. Allege that by an act of the Legislature of the State of California, entitled "An act relating to certificates of incorporation"; approved March 1st, 1870, any corporation then organized or thereafter to be organized under the laws of the State of California, was authorized to amend its articles of association or certificate of incorporation.

Par. 11. Allege that by an act approved on April

4th, 1870, entitled "An act to aid in giving effect to an act of Congress, relating to the Southern Pacific Railroad Company," the Legislature of the State of California enacted as follows: "Section 1. Whereas, by the provisions of a certain act of Congress of the United States of America, entitled an act granting lands to aid in the construction of a railroad and telegraph line from San Francisco to the eastern line of the State of California, approved July twenty-seventh, eighteen hundred and sixty-six, certain grants were made to, and certain rights, privileges, powers and authority were vested in and conferred upon the Southern Pacific Railroad Company, a corporation duly organized and existing under the laws of the State of California; therefore to enable the said company to more fully and completely comply with and perform the requirements, provisions and conditions of the said act of Congress, and all other acts of Congress now in force or which may hereafter be enacted, the State of California hereby consents to said act; and the said company, its successors and asigns, are hereby authorized and empowered to change the line of its railroad so as to reach the eastern boundary line of the State of California by such route as the company shall determine to be the most practicable, and to file new amendatory articles of association; and the right, power and privileges is hereby granted to, conferred upon and vested in them, to construct, maintain and operate, by steam or other power, the said railroad and telegraph line mentioned in said act of Congress, hereby confirming to and vesting in said company, its successors and assigns, all the rights, privileges, franchises, power and authority

conferred upon, granted to or vested in said company by the said act of Congress or any act of Congress which may be hereafter enacted."

Par. 12. Allege that by its Joint Resolution entitled "Joint Resolution concerning the Southern Pacific Railroad of California," approved on June 28th, 1870, the Congress of the United States resolved as follows: "That the Southern Pacific Railroad Company of California may construct its road and telegraph line, as near as may be, on the route indicated by the map filed by the said company in the Department of the Interior on the third day of January, eighteen hundred and sixty-seven; and upon the construction of each section of said road in the manner and within the time provided by law, and notice thereof being given by the company to the Secretary of the Interior, he shall direct an examination of each such sections by commissioners to be appointed by the President, as provided in the act making a grant of land to said company, approved July twenty-seventh, eighteen hundred and sixty-six, and upon the report of the commissioners to the Secretary of the Interior that such section of said railroad and telegraph line has been constructed as required by law, it shall be the duty of the said Secretary of the Interior to cause patents to be issued to said company for the sections of land coterminous to each constructed section reported on as aforesaid, to the extent and amount granted to said company by the said act of July twenty-seventh, eighteen hundred and sixty-six, expressly saving and reserving all the rights of actual settlers, together with the other conditions and restrictions provided for in the third section of said act."

Par. 13. Allege that on or about October 11th, 1870,

articles of association, amalgamation and consolidation were duly made and entered into under the laws of the State of California, by and between the said San Francisco & San Jose Railroad Company, the defendant Southern Pacific Railroad Company, and other railroad companies, wherein and whereby the said San Francisco & San Jose Railroad Company and other railroad companies were amalgamated into and consolidated with the defendant Southern Pacific Railroad Company, under the corporate name and style of Southern Pacific Railroad Company, and the defendant Southern Pacific Railroad Company thereby became the owner of all railroad stock and other property owned or possessed by the said amalgamated and consolidated companies; and by the said articles of association, amalgamation and consolidation, the defendant Southern Pacific Railroad Company duly amended its articles of incorporation so as to expressly provide therein for its purchasing, constructing, maintaining, owning and operating a continuous railroad from the City of San Francisco, through the counties of San Francisco, San Mateo, Santa Clara, Monterey, Fresno, Tulare, Kern, San Bernardino and San Diego, to the Colorado River, together with such branch line railroad as the board of directors of the defendant Southern Pacific Railroad Company might thereafter deem advantageous.

Par. 14. Allege that the defendant Southern Pacific Railroad Company completed the construction of, and fully equipped its railroad along the line designated on the said map of January 3d, 1867, from Alcalde to its connection with the Atlantic & Pacific railroad at Needles, on the Colorado River, in several sections, at various dates between the years 1870 and 1884; and during the last men-

tioned period of time, and as the said sections of railroad extending from San Jose to Tres Pinos and from Alcalde to Needles were constructed as aforesaid, the defendant Southern Pacific Railroad Company filed with the Secretary of the Interior, and the Secretary of the Interior duly accepted and approved, maps of the final location of each and all of the said sections of railroad, as the same had been theretofore accepted and approved by the commissioners, hereinafter mentioned.

Par. 15. Allege that commissioners duly appointed by the President of the United States for tha purpose, examined all of the said railroad as the construction thereof was completed in the several sections aforesaid, and after such examination and prior to December, 1884, duly reported to the President of the United States and the Secretary of the Interior, that each of such sections and all of the said railroad had been completed in a good, substantial and workmanlike manner, in all respects as required by the said act of July 27th, 1866; and prior to December, 1884, each and all of said reports were duly accepted and approved by the Secretary of the Interior.

Par. 16. Allege that many of the odd-numbered sections of land lying within twenty miles and thirty miles on each side of the line designated on the map of January 3d, 1867, and within twenty miles and thirty miles on each side of the line of the said railroad as finally located and constructed, were granted, sold, reserved, occupied by homestead settlers, pre-empted and disposed of by the United States otherwise than to the defendant Southern Pacific Railroad Company, prior to the passage of the said act of July 27th, 1866; and on July 27th, 1866. and at all

times since, all the odd-numbered sections of land lying within twenty miles and thirty miles on each side of the line designated on the map of January 3d, 1867, and within twenty miles and thirty miles on each side of the line of said railroad as finally located and constructed, not granted, sold, reserved, occupied by homestead settlers, pre-empted and disposed of by the United States otherwise than to the defendant Southern Pacific Railroad Company were insufficient to make, supply or equal the quantity of land granted by the said act of July 27th, 1866, to the defendant Southern Pacific Railroad Company.

Par. 17. Allege that on July 27th, 1866, and at all the times when the defendant Southern Pacific Railroad Company's railroad was located and constructed as aforesaid, all of the lands shown by Exhibit "A," attached to and made part of this answer, to be situated within the limits, primary or indemnity, of the grant made to the defendant Southern Pacific Railroad Company by the said act of July 27th, 1866, were public lands, not mineral, to which the United States had full title, not reserved, sold, granted or otherwise appropriated, and free from pre-emption or other claims or rights, other than the claims and rights of these defendants; and all of such lands were granted to the defendant Southern Pacific Railroad Company by the act of July 27th, 1866.

Par. 18. Allege that prior to the issue of patents therefor, the defendant Southern Pacific Railroad Company selected all the lands referred to in the next preceeding paragraph of this answer, and paid all fees, costs of surveying and patenting the same; and all such selections were made under the direction of the Secretary of the

Interior, and under full compliance with all rules and regulations of the Secretary of the Interior and Commissioner of the General Land Office; and thereafter patents were duly and lawfully, but not erroneously, issued, conveying the title to said lands from the United States to the defendant Southern Pacific Railroad Company—full particulars respecting which patents, including the dates thereof, are set forth in Exhibit "A," attached to this answer. And these defendants further allege that at all times when the said selections were, respectively, made, the lands selected were public lands, not mineral, to which the United States then had full title, not reserved, sold, granted or otherwise appropriated, and free from preemption or other claims or rights, excepting the claims and rights of these defendants; and denying that the United States has ever demanded a reconveyance of the said lands, these defendants allege that the United States at no time demanded a reconveyance thereof, nor has the United States offered to return the moneys paid as aforesaid for fees, cost of surveying or patenting the said lands, or any part thereof.

II.

Par. 19. And these defendants further answering: Allege that by section 23 of an act of Congress, entitled "An act to incorporate the Texas Pacific Railroad Company, and to aid in the construction of its road, and for other purposes," approved on March 3d, 1871, the defendant Southern Pacific Railroad Company was also authorized to construct a railroad from a point at or near Tehachapi pass, by way of Los Angeles, to the Colorado River; and to aid in the construction thereof the defend-

ant Southern Pacific Railroad Company was by said section granted the same grants, rights and privileges as were granted to it by the act of July 27th, 1866, hereinbefore referred to. The said act of March 3d, 1871, as printed in volume 16, United States Statutes, at page 573, and following, is referred to and made part of this answer.

Par. 20. Allege that the defendant Southern Pacific Railroad Company duly, and within the time provided, accepted the terms, conditions and impositions of the said act of March 3d, 1871, and signified the same in writing, under its corporate seal, duly executed pursuant to the direction of its board of directors first had and obtained, deposited and filed in the office of the Secretary of the Interior.

Par. 21. Allege that prior to April 3d, 1871, the defendant Southern Pacific Railroad Company fixed the general route of the railroad contemplated by section 23 of the said act of March 3d, 1871, and on April 3d, 1871, duly filed with the Secretary of the Interior a map designating the same; which map was thereupon duly accepted by the Commissioner of the General Land Office and Secretary of the Interior; and on April 21st, 1871 the Commissioner of the General Land Office, under direction of the Secretary of the Interior, withdrew all odd-numbered sections within thirty miles on each side of the line of route shown on the said map, from pre-emption and homestead entry, sales and other disposition by the United States; and such sections have remained so withdrawn continuously since April 3d, 1871, by force and effect of said withdrawal and of section 6 of the act of July 27th, 1866, hereinbefore referred to.

Par. 22. Allege that on or about April 15th, 1871, the defendant, Southern Pacific Railroad Company, complying in all respects with the laws of the State of California, duly amended its articles of incorporation so as to include therein a more particular description of the railroad which the said act of Congress of March 3d, 1871, authorized it to construct, as the same was designated on the said plat thereof filed on April 3d, 1871.

Par. 23. Allege that during the year 1871, the defendant, Southern Pacific Railroad Company, commenced the construction of the railroad designated on the said plat filed on April 3d, 1871, and completed the construction thereof, in a good, workmanlike manner, in all respects as required, along the line shown on the said plat, in five several sections, all prior to December 28th, 1877; and, prior to the last mentioned date, the defendant, Southern Pacific Railroad Company, filed with the Secretary of the Interior, and the Secretary of the Interior accepted and approved, plats of the definite location and construction of the said railroad.

Par. 24. Allege that commissioners duly appointed by the President of the United States for that purpose, examined all of the said railroad as the construction thereof was completed in the several sections aforesaid, and after such examination and prior to December 28th, 1877, duly reported to the President of the United States, that each of such sections and all of the said railroad had been completed in a good, substantial and workmanlike manner, in all respects as required by the said act of March 3d, 1871, and the President of the United States duly accepted and approved such reports.

Par. 25. Allege that many of the odd-numbered sec-

tions of land lying within twenty miles and thirty miles on each side of the line designated on the said map of April 3d, 1871, and within twenty miles and thirty miles on each side of the said railroad as definitely located and constructed, were granted, sold, reserved, occupied by homestead settlers, pre-empted and disposed of by the United States otherwise than to the defendant Southern Pacific Railroad Company, prior to the passage of the said act of March 3d, 1871; and on March 3d, 1871, and at all times since, all the odd numbered sections 'ying within twenty miles and thirty miles on each side of the said railroad as definitely located and constructed, not granted, sold, reserved, occupied by homestead settlers, pre-empted and disposed of by the United States otherwise than to the defendant Southern Pacific Railroad Company, were insufficient to make, supply or equal the quantity granted by the said act of March 3d, 1871 to the defendant, Southern Pacific Railroad Company.

Par. 26. Allege that on Mar 3d, 1871, and at all the times when the defendant, Southern Pacific Railroad Company's railroad was definitely located and constructed as aforesaid, all of the lands shown by Exhibit "A," attached to and made part of this answer, to be situated within the limits, primary or indemnity, of the grant made to defendant Southern Pacific Railroad Company, by the act of March 3d, 1871, were public lands, not mineral, to which the United States had full title, not reserved, sold, granted or otherwise appropriated, and free from pre-emption, or other claims or rights, other than the claims and rights of these defendants; and all of such lands were granted to the defendant Southern Pacific Railroad Company by the said act of March 3d, 1871.

Par. 27. Allege that prior to the issue of patents therefor, the defendant Southern Pacific Railroad Company, selected all the lands referred to in the next preceding paragraph of this answer, and paid all fees, costs of surveying and patenting the same; and all such selections were made under the direction of the Secretary of the Interior, and under full compliance with all rules and regulations of the Secretary of the Interior and Commissioner of the General Land Office; and thereafter patents were duly and lawfully, but not erroneously, issued, conveying the title to said lands from the United States to the defendant Southern Pacific Railroad Company—full particulars respecting which patents, including the dates thereof, are set forth in Exhibit "A," attached to this answer. And these defendants further allege, that at all the times when the said selections were, respectively, made, the lands selected were public lands, not mineral, to which the United States had full title, not reserved, sold, granted or otherwise appropriated, and free from pre-emption or other claims or rights, excepting the claims and rights of these defendants; and denying that the United States have ever demanded a reconveyance of the said lands, these defendants allege that the United States at no time demanded a reconveyance thereof, nor has the United States offered to return the moneys paid as aforesaid for fees, costs of surveying or patenting the said lands, or any part thereof.

III.

Par. 28. Further answering these defendants: Admit that the act of Congress approved July 27th, 1866, hereinbefore referred to, provided a grant of lands to aid in

the construction of the railroad required to be constructed by the Atlantic & Pacific Railroad Company; but deny that such land grant ever attached to any of the lands described in Exhibit "A" or Exhibit "B" to the plaintiff's bill of complaint herein, or to any lands within the State of California.

Par. 29. Deny that the Atlantic & Pacific Railroad Company duly, in anywise, or at any time, accepted said, or any, grant, or the terms or conditions of the said act of July 27th, 1866.

Par. 30. Deny that the Atlantic & Pacific Railroad Company did designate upon plats or maps the whole of its line of route under the said act, or any part thereof within the State of California, definitely locating the same from Springfield by way of any of the points and places named in the said act, to the Pacific Ocean at San Buenaventura, or to any point within the State of California; and deny that the said company did, in 1872, or at any time, file such, or any, plats or maps designating said line of route in the office of the Commissioner of the General Land Office, definitely establishing the whole thereof, or definitely locating any part thereof in the State of California.

Par. 31. Admit that the Atlantic & Pacific Railroad Company did not construct any railroad in California, and that by the act of Congress approved on July 6th, 1886, referred to in the plaintiff's bill of complaint, all lands or rights to lands in California, granted to or conferred upon the Atlantic & Pacific Railroad Company, were declared forfeited and resumed to the United States and restored to public domain; but deny that any lands or rights to lands in California were ever granted to the

Atlantic & Pacific Railroad Company; and deny that any lands referred to or described in the plaintiff's bill of complaint were forfeited to the United States by the said act of July 6th, 1886; or that at the time of the passage of that act the United States owned the lands described or referred to in the plaintiff's bill of complaint, or any thereof; or that the Atlantic & Pacific Railroad Company at any time owned, or claimed to own, or had, or claimed to have, prospective or any rights to, the said lands, or any thereof.

Par. 32. Deny that the lands described or referred to in the plaintiff's bill of complaint, or any part or all thereof, were not granted to the defendant Southern Pacific Railroad Company; or that any of said lands were set apart or devoted to aid in the construction of the Atlantic & Pacific Railroad; or that any of said lands were reserved from or excepted out of the grants, hereinbefore mentioned, made by Congress to the defendant, Southern Pacific Railroad Company; or that these defendants have no right, title or interest in or to the said lands, and all thereof.

Par. 33. Deny that the lands described in Exhibit "A" attached to the plaintiff's bill of complaint, or any thereof, appertain to any grant made to the Atlantic & Pacific Railroad Company; or that those lands, or any thereof, are within the thirty-mile limits, or any limits, of any grant made to the Atlantic & Pacific Railroad Company.

IV.

Par. 34. Further answering, these defendants: Admit and allege, that in certain suits then pending, brought by the United States against the Southern Pacific Rail-

road Company, and others, on December 12, 1892, the Supreme Court of the United States finally adjudged and determined as between the parties to those suits, as is set forth in the decisions thereof reported in the U. S. Supreme Court Report, Volume 146, on pages 570 to 619, inclusive; to which decisions these defendants refer as to what was adjudged and determined in those cases. Allege that those suits were brought to quiet the title of the United States against the adverse claims of the parties, defendants therein, to about 5,000 acres of land within the primary limits of the grant made to the Southern Pacific Railroad Company by the act of March 3d, 1871, hereinbefore referred to, claimed by the defendants in those suits under that act, but not otherwise; which lands were many miles distant from the lands described in Exhibit "A" and Exhibit "B" to the plaintiff's bill in this case, and many miles distant beyond the thirty-mile limits of the land grant made to the defendant Southern Pacific Railroad Company, by the act of July 27th, 1866, hereinbefore referred to. And these defendants deny that they, or any of them, other than the Southern Pacific Railroad Company, were parties to the said suits, or to suit or suits pending before or decided by the Supreme Court of the United States on December 12th, 1892, or at any other time; and deny that in said suits, or in any other suit or suits, it was finally and conclusively, or in any wise, adjudged and decreed as is alleged and set forth in the plaintiff's bill of complaint herein.

Par. 35. Admit and allege that on October 18th, 1897, in another suit pending, brought by the United States against the Southern Pacific Railroad Company and

others to quiet title to lands claimed by the defendants therein under the grant made to the Southern Pacific Railroad Company by the act of March 3d, 1871, hereinbefore referred to, it was by the Supreme Court of the United States again adjudged and determined in all and every respect as it had been theretofore adjudged and determined by the said decisions of December 12th, 1892, as reported in the U. S. Supreme Court Report, Volume 146, pages 570 to 619, inclusive—but not otherwise; but these defendants deny that they, or any of them other than the Southern Pacific Railroad Company, were parties to the said suit..

Par. 36. Admit and allege that on January 7th, 1898, another suit was pending in this Court, numbered 600, brought by the United States against the Southern Pacific Railroad Company and others, to quiet title to and cancel patents issued to the Southern Pacific Railroad Company for the lands described in Exhibit "B" to the plaintiff's bill of complaint herein, and to obtain a judgment in money for the alleged value of said lands, sold by the defendant Southern Pacific Railroad Company; and admit that on January 7th, 1898, the United States dismissed said suit as to all lands described in Exhibit "B" attached to the plaintiff's bill of complaint in this case; and these defendants are advised, and so allege and claim, that such dismissal, as alleged and set forth in the plaintiff's bill of complaint herein, is a bar to this suit as to all lands described in the said Exhibit "B."

V.

Par. 37. Further answering these defendants: Allege that each of the defendants, Pomona Land and Water

Company and Fairmount Land and Water Company is a corporation, duly incorporated and organized under the laws of the State of California; and that each and all of the defendants answering herein are citizens of the United States.

Par. 38. Allege that on or about April 1st, 1875, the defendant, Southern Pacific Railroad Company, made, executed and delivered to D. O. Mills and Lloyd Tevis, as trustees, a mortgage bearing date that day, conveying to them all the lands described in Exhibit "A" and Exhibit "B" to the plaintiff's bill of complaint herein; which mortgage was given to secure the payment of negotiable mortgage bonds to be issued and sold by the said company. That prior to March 3d, 1887, the said company duly issued, sold and delivered negotiable bonds secured by said mortgage, of the face value of $39,285,000, to bona fide purchasers thereof, who purchased the same without notice of any claim or demand of United States to, or respecting, any of the said lands; and each and all of the said purchasers paid the full value for the said bonds, and $10,000,000 in value of the said bonds are, and on March 2d, 1896, were, outstanding and unpaid in the hands of such bona fide purchasers. Prior to the commencement of this suit, the defendant, Homer S. King, duly succeeded, and was duly substituted for, the said Lloyd Tevis, as such trustee.

Par. 39. Allege that the Central Trust Company of New York is, and on August 25th, 1888, was, a corporation duly incorporated and organized under the laws of the State of New York; that on the last-mentioned date, the defendant Southern Pacific Railroad Company made, executed and delivered to the Central Trust Company of

New York a further mortgage or deed of trust, conveying all the lands described in Exhibit "A" and Exhibit "B" of the plaintiff's bill of complaint herein, given to secure the payment of negotiable mortgage bonds to be issued and sold. That prior to the year 1893, the defendant Southern Pacific Railroad Company duly issued sold and delivered negotiable bonds secured by the said mortgage or deed of trust, of the face value of $11,375,000, to bona fide purchasers thereof, who purchased the same in good faith, without notice of any claim or demand of the United States to or respecting, any of the said lands; and each and all of such purchasers paid full value for the said bonds, and were and are bona fide purchasers of the same.

Par. 40. Allege that on or about September 15th, 1893, the defendant Southern Pacific Railroad Company made, executed and delivered unto the said Central Trust Company of New York, a further mortgage or deed of trust, conveying all the lands described in Exhibit "A" and Exhibit "B" to the plaintiff's bill of complaint herein, given to secure the payment of negotiable mortgage bonds to be issued and sold. That prior to March 2d, 1896, the defendant Southern Pacific Railroad Company, duly issued, sold and delivered negotiable bonds secured by the last-mentioned mortgage or deed of trust, of the face value of more than $10,000,000, to bona fide purchasers thereof, who purchased the same in good faith, without notice of any claim or demand of the United States to, or respecting, any of the said lands; and each and all of such purchasers paid full value for the said bonds, and were and are bona fide purchasers of the same.

Par. 41. Allege that Exhibit "A," attached to and made part of this answer, truly and correctly sets forth the full particulars of sales made by the defendant Southern Pacific Railroad Company, of the lands described in Exhibit "A" and Exhibit "B" to the plaintiff's bill of complaint herein; that each of the sales as set forth in Exhibit "A" hereto, was made to a bona fide purchaser, citizen of the United States, who purchased in good faith and for full value of the land at the time of purchase, without notice or knowledge that the United States had, or claimed to have, any right, title or interest whatsoever, in or to the lands purchased, or any part thereof; and each of such purchasers believed, sincerely and in good faith, that in making such purchase he was acquiring the true title to the lands so purchased. But these defendants deny that any of said lands were at any time, or are now, worth, or were sold by the defendant, Southern Pacific Railroad Company for, any sum or sums other than or different from the sum or sums stated in Exhibit "A" to this answer to be the sums for which they wer sold; or that the said company at any time received any sum or sums for the said lands, or any thereof, other than is shown by Exhibit "A" hereto attached: or that the defendants' answer in the said suit 600, or the testimony of Jerome Madden in that suit, gave any statements other than, or in conflict with, the statements made in Exhibit "A" hereto attached.

Par. 42. Allege that were it in anywise true (which these defendants deny that it is) that any or all of the patents referred to in the plaintiff's bill of complaint, or in Exhibit "A" attached to this answer, were issued

erroneously, then the right and title of the trustees under the trust mortgage of April, 1875, hereinbefore set forth, and the right and title to the Central Trust Company of New York under the trust mortgages of August, 1888, and September, 1893, hereinbefore referred to, and the right and title of each and all of the purchasers whose purchases are set forth in Exhibit "A" to this answer, were and are confirmed by the act of Congress approved on March 2d, 1896, referred to in the plaintiff's bill of complaint. But these defendants deny that the defendants, M. L. Wicks, Alice V. Slosson, Ivar A. Weid, James Mair, Pomona Land and Water Company, T. Banbury, B. Chandler, H. H. Linville, J. R. Nevin, Henry M. Loud, William Thorpe and Fairmount Land and Water Company, either or any of them, represent a class of persons, or any person or persons other than themselves and their predecessors in interest, holding title to lands under the defendant Southern Pacific Railroad Company.

Par. 43. Admit that Congress reserved the right to alter, amend or repeal the acts hereinbefore referred to, granting lands to the defendant Southern Pacific Railroad Company, in so far as might be with due regard to the rights of said company and these defendants; but deny that Congress reserved, or possessed, the power to alter amend, or repeal the said acts, or any thereof, at any time after construction of the respective sections of railroad by the defendant Southern Pacific Railroad Company, as hereinbefore set forth. And in this behalf deny that the Acts of Congress approved on

March 3d, 1887, February 12th, 1896 and March 2d, 1896, referred to in the plaintiff's bill of complaint, or either or any any of them, were passed in pursuance of any right or power to alter, amend or repeal, or they did in anywise alter, amend or repeal, either or any of the Acts granting lands to the defendant Southern Pacific Railroad Company; and further deny that the said acts of March 3d, 1887, February 12th, 1896 and March 2d, 1896, either or any of them, constitute a valid contract, or any contract whatsoever, between the United States and the defendant Southern Pacific Railroad Company.

Par. 44. These defendants refer to the said Act of March 3d, 1887, as printed in Volume 24 at pages 556 and following of the United States Statutes, to the said act of February 12th, 1896, as printed in Volume 29 at pages 6 and following of the United States Statutes; and to the said act of March 2d, 1896, as printed in Volume 29, at pages 42 and following, of the United States Statutes; and deny that the said acts, either or any of them, provide as is alleged or stated in the plaintiff's bill of complaint.

VI.

Par. 45. Further answering, these defendants: Deny that the defendant Southern Pacific Railroad Company has instituted or is still instituting, numerous or any suits to enforce numerous or any contracts against numerous or any persons who have purchased lands from it, to the embarrassment of the United States in the administration of the public lands, or to the embarrass-

ment of the United States at all; deny that the United States has any right whatsoever that the defendant Southern Pacific Railroad Company be enjoined from prosecuting or maintaining suits or actions against any person or persons for the foreclosure of contracts, or recovery of purchase price for any lands described in Exhibit "A" to the plaintiff's bill of complaint; and deny that the defendant Southern Pacific Railroad Company is in anywise accountable, or indebted, to the plaintiff, for moneys recived by the said company for any lands described in Exhibit "A" and "B" to the plaintiff's bill of complaint, sold by said company; and allege that the United States has never demanded that the said company pay unto it any price or sum for the said lands, or any thereof.

Par. 46. And these defendants deny all and all manner of matter, cause or thing, in the plaintiff's bill of complaint contained, material or necessary for them to make answer to and not herein well and sufficiently answered, confessed, traversed and avoided or denied, is true to the knowledge or belief of any of the defendants. All of which matters and things these defendants are ready and willing to aver, maintain and prove, as this honorable Court may direct; and these defendants pray to be hence dismissed, with their reasonable costs and charges.

WM. SINGER, Jr., and
H. V. Reardon,
Attorneys for Defts. answering herein.

Counsel for Defts. answering herein.

Contract No. 2418.

Issued Sept. 23d, 1882, to George Chaffey, Jr., and W. B. Chaffey. For Fracl. N. E. ¼ of Sec. 5, T. 1 S., R. 6 W., S. B. M. (Described in Exhibit "A," and also in Exhibit "B." Within primary limits S. P. R. R. Branch-line grant.) 167 Acres. Agreed Pur. Price, $584.50. Pur. Price Paid, $584.50. Int. paid, $——— Deed issued Oct. 5th, 1882, to Chaffey and Chaffey. Patent No. 2. Issued Apl. 4th, 1879, for all land described above.

Contract No. 2627.

Issued Dec. 20th, 1882, to George Chaffey, Jr., and W. B. Chaffey. For N. W. ¼ of Sec. 9, T. 1 S., R. 6 W., S. B. M. (Described in Exhibit "A," and also in Exhibit "B." Within primary limts S. P. R. R. Branch-line grant.) 160 Acres. Agreed Pur. Price, $600. Pur. Price Paid, $600. Int. Paid, $153.06. Deed issued July 18th, 1887, to Chaffey and Chaffey. Patent No. 2. Issued Apl. 4th, 1879, for all of land described above.

Contract No. 2338.

Issued June 30th, 1882, to M. L. Wicks. For N. ½ of Sec. 21, T. 1 S., R. 7 W., S. B. M. (Described in Exhibit "A," and also in Exhibit "B." Within primary limits S. P. R. R. Branch-line grant.) 320 Acres. Agreed Pur. Price, $1400. Pur. Price Paid, $1400. Int. Paid, $397.44. Deed issued Aug 8th, 1887, to Pomona Land and Water Co. Patent No. 2. Issued Apl. 4th, 1879, for all land described above.

Contract No. 2319.

Isued May 18th, 1882, to M. L. Wicks. For S ½ of Sec. 21, T. 1 S., R. 7 W., S. B. M. (Described in Exhibit "A," and also in Exhibit "B." Within primary limits S. P. R. R. Branch-line grant.) 320 Acres. Agreed Pur. Price, $1400. Pur. Price Paid, $1400. Int. Paid, $349.75. Deed issued Nov. 18th, 1886, to Pomona Land and Water Co. Patent No. 2. Issued Apl. 4th, 1879, for all of land described above.

Contract No. 2606.

Issued Dec. 2d, 1882, to Mrs. E. H. Baker. For E. ½ of N. E. ¼ and E. ½ of S. E. ¼ of Sec. 1, T. 1 S., R. 8 W., S. B. M. (Described in Exhibit "A" and also in Exhibit "B." W[illegible] in primary limits S. P. R.R. Branch-line grant) 160.04 Acres. Agreed Pur. Price, $420.10. Pur. Price Paid, $420.10. Int. Paid, $23.52. Deed issued Dec. 12th, 1883, to Henry B. Botsford. Patent No. 2. Issued Apl. 4th, 1879, for all land described above.

Contract No. 2976.

Issued Dec. 26th, 1883, to C. T. Mills. For W. ½ of N. E. ¼; W. ½ of S. E. ¼, and W. ½ of Sec. 1, T. 1 S., R. 8 W., S. B. M. (Described in Exhibit "A" and also in Exhibit "B." Within primary limits S. P. R. R. Branch-line grant.) 480.56 Acres. Agreed Pur. Price, $1381.64. Pur. Price Paid, $1381.64. Int. Paid, $355.46. Deed issued Aug. 7th, 1888, to Pomona Land and Water Co. Patent No. 2. Issued Apl. 4th, 1879, for all of land described above.

Contract No. 2338.

Issued June 30th, 1882, to M. L. Wicks. For all of Sec. 11, T. 1 S., R. 8 W., S. B. M. (Described in Exhibit 'A" and also in Exhibit "B." Within primary limits of S. P. R. R. Branch-line grant.) 640 Acres. Agreed Pur. Price, $1680. Pur. Price Paid, $1680. Int. Paid, $476.93. Deed issued Aug. 8th, 1887, to Pomona Land and Water Co. Patent No. 2. Issued Apl. 4th, 1879, for all of land described above.

Contract No. 2319.

Issued May 18th, 1882, to M. L. Wicks. For all of fracl. Sec. 15, T. 1 S., R. 8 W., S. B. M. (Described in Exhibit "A" and also in Exhibit "B." Within primary limits S. P. R. R. Branch-line grant. 416 Acres. Agreed Pur. Price, $1092. Pur. Price Paid, $1092. Int. Paid, $272.79. Deed issued Nov. 18th, 1886, to Pomona Land and Water Co. Patent No. 2. Issued Apl. 4th, 1879, for all of land described above.

Contract No. 2305.

Issued May 4th, 1882, to M. L. Wicks. For Lots 1 and 2 of Sec. 21, T. 1 S., R. 8 W., S. B. M. (Described in Exhibit "A" and also in Exhibit "B." Within primary limits S. P. R. R. Branch-line grant.) 32.10 Acres. Agreed Pur. Price, $160.50. Pur. Price Paid, $160.50. Int. Paid, $46.97. Deed issued Aug. 8th, 1887, to Pomona Land & Water Co. Patent No. 2. Issued Apl. 4th, 1879, for all of land described above.

Contract No. 2319.

Isued May 18th, 1882, to M. L. Wicks. For N. ½ of N. E. ¼ of Sec. 23, T. 1 S., R. 8 W., S. B. M. (Described in Exhibit "A" and also in Exhibit "B." Within primary limits S. P. R. R. Branch-line grant.) 80 Acres. Agreed Pur. Price, $400. Pur. Price Paid, $400. Int. Paid $99.93. Deed issued Nov. 18th, 1886, to Pomona Land and Water Co. Patent No. 2. Issued Apl. 4th, 1879, for all of land described above.

Contract No. 2305.

Issued May 4th, 1882, to M. L. Wicks. For lots 1, 2, 3 and 4 of Sec. 25, T. 1 S., R. 8 W. (Described in Exhibit "A," and also in Exhibit "B." Within primary limits S. P. R. R. Branch-line grant) 138.34 Acres. Agreed Pur. Price, $518.78. Pur. Price Paid, $518.78. Int. paid, $151.78. Deed issued Aug. 8th, 1887, to Pomona Land and Water Co. Patent No. 2. Issued April 4th, 1879, for all of land described above.

Contract No. 2305.

Issued May 4th, 1882, to M. L. Wicks. For S. ½ of S. E. ¼ and S. ½ of S. W. ¼ of Sec. 27, T. 1 S. R. 8 W., S. B. M. (Described in Exhibit "A," and also in Exhibit "B." Within primary limits S.P.R.R. Branch-line grant.) 160 Acres. Agreed Pur. Price, $600. Pur. Price Paid, $600. Int. paid, $175.56. Deed issued Aug. 8th, 1887, to Pomona Land & Water Co. Patent No. 2. Issued Apl. 4th, 1879, for all of land described above.

Contract No. 3083.

Issued Jany. 24th, 1884, to C. M. Wright. For Lots 6 and 7 of Sec. 33, T. 1 S., R. 9 W., S. B. M. (Described in Exhibit "A," and also in Exhibit "B." Within primary limits S. P. R. R. Branch-line grant.) 48.16 Acres. Agreed Pur. Price, $481.60. Pur. Price Paid, $481.60. Int. paid, $142.72. Deed issued May 17th, 1889, to C. M. Wright. Patent No. 9. Issued Jany. 9th, 1885, for all of land described above.

Contract No. 3082.

Issued Jany. 24th, 1884, to D. H. Collins. For lot 5 of Sec. 33, T. 1 S., R. 9 W., S. B. M. (Described in Exhibit "A," and also in Exhibt "B." Within primary limits S. P. R. R. Branch-line grant.) 31.79 Acres. Agreed Pur. Price, $317.90. Pur. Price Paid, $317.90. Int. paid, $259.58. Deed issued Apl. 5th, 1899, to D. H. Collins. Patent No. 9. Issued Jany. 9th, 1885, for all of land described above.

Contract No. 3435.

Issued April 17th, 1884, to J. M. Griffith. For S. ½ of S. S. W. ¼ and Lots 1, 2, 3 and 4 of Sec. 35, T. 1 S., R. 9 W., S. B. M. (Described in Exhibit "A" and also in Exhibit "B." Within primary limits S. P. R. R. Branch-line grant.) 176 Acres. Agreed Pur. Price, $880. Pur. Price Paid, $880. Int. paid, $249.30. Deed issued May 17th, 1889, to C. M. Wright and Jane Lynch. Patent No. 9. Issued Jany. 9th, 1895, for all of land described above.

Contract No. 9141.

Issued Jany. 5th, 1888, to R. W. Morse. For Lot 1 of Sec. 1, T. 1 S., R. 11 W., S. B. M. (Described in Exhibit "A," but not in Exhibit "B." Within primary limits S. P. R. R. Branch-line grant.) 14.97 Acres. Agreed Pur. Price, $74.85. Pur. Price Paid, $74.85. Int. paid, $———. Deed issued Feby. 1st, 1888 to R. W. Morse. Patent No. 1. Issued Mch. 29th, 1876, for all and described above.

Contract No. 2538.

Issued Oct. 30th, 1882, to L. J. Rose. For Lot 1 of N. W. ¼ of Sec. 7, T. 1 S., R. 11 W., S. B. M. (Described in Exhibit "A," and also in Exhibit "B." Within primary limits S. P. R. R. Branch-line grant.) 40 Acres. Agreed Pur. Price, $1400. Pur. Price Paid, $1400. Int. paid, $———. Deed issued Nov. 8th, 1882, to L. J. Rose. Patent No. 4. Issued June 26th, 1882, for all land described above.

Contract No. 2640.

Issued Jany. 8th, 1883, to T. W. Corder. For Lot 5 of S. E. ¼ of Sec. 7, T. 1 S., R. 11 W., S. B. M. (Described in Exhibit "A," and also in Exhibit "B." Within primary limits S. P. R. R. Branch-line grant.) 10.83 Acres, Agreed Pur. Price, $216.60. Pur. Price Paid, $216.60. Int. paid, $———. Deed issued Jany. 9th, 1883, to T. W. Corder. Patent No. 2. Issued Apl. 4th, 1879, for all land described above.

Contract No. 2509.

Issued Oct. 24th, 1882, to Thomas Pollard. For Lot 6 of S. E. ¼ of Sec. 7, T. 1 S., R. 11 W., S. B. M. (Described

in Exhibit "A," and also in Exhibit "B." Within primary limits S. P. R. R. Branch-line grant.) 10.65 Acres. Agreed Pur. Price, $213. Pur. Price Paid, $213. Int. paid $———. Deed issued Oct. 27th, 1882, to Thomas Pollard. Patent No. 2. Issued Apl. 4th, 1879, for all land described above.

Contract No. 1638.

Issued Nov. 2nd, 1881, to Thomas Pollard. For Lots 7 and 8 of N. E. ¼ of Sec. 7, T. 1 S., R. 11 W., S. B. M. (Described in Exhibit "A," and also in Exhibit "B." Within primary limits S. P. R. R. Branch-line grant.) 20.76 Acres. Agreed Pur. Price, $415.20. Pur. Price Paid, $415.20. Int. Paid $———. Deed issued Nov. 28th, 1881, to Thomas Pollard. Patent No. 2. Issued Apl. 4th, 1879, for all land described above.

Contract No. 2062.

Issued Jany. 23d, 1882, to Austin Brown. For E. ½ of N. E. ¼ and Lot 6 of Sec. 13, T. 1 S., R. 11 W., S. B. M. (Described in Exhibit "A," and also in Exhibit "B." Within primary limits S. P. R. R. Branch-line grant.) 107.86 Acres. Agreed Pur. Price, $371.44. Pur. Price Paid, $371.44. Int. Paid, $42.75. Deed issued Nov. 26th, 1884, to Austin Brown. Patent No. 1. Issued Mch. 29th, 1876, for all land described above.

Contract No. 2930.

Issued Dec. 10th, 1883, to Milton Santee. For W. ½ of N. E. ¼, E. ½ of N. W. ¼, N. ½ of S. W. ¼ and Lots 1, 2, 3, 4 and 5 of Sec. 13, T. 1 S., R. 11 W., S. B. M. (Described in Exhibit "A," but not in Exhibit "B." Within prim-

ary limits S. P. R. R. Branch-line grant.) 373.68 Acres. Agreed Pur. Price, $934.20. Pur. Price Paid, $934.20. Int. Paid, $262.26. Deed issued Dec. 20th, 1888, to Homer Santee. Patent No. 1. Issued Mch. 29th, 1876, for all land described above.

Contract No. 545.

Issued April 16th, 1877, to Solomon Richardson. For Lot 1 of Sec. 3, T. 1 S., R. 12 W., S. B. M. (Described in Exhibit "A," and also in Exhibit "B." Within primary limits S. P. R. R. Branch-line grant.) 17.31 Acres. Agreed Pur. Price, $432.75. Pur. Price Paid, $432.75. Int. Paid, $———. Deed issued Apl. 21st, 1877, to Solomon Richardson. Patent No. 1. Issued March 29th, 1876, for all land described above.

Contract No. 544.

Issued March 28th, 1877, to B. D. Wilson. For Lot 5 of Sec. 3, T. 1 S., R. 12 W., S. B. M. (Described in Exhibit "A," and also in Exhibit "B." Within primary limits S. P. R. R. Branch-line grant.) 2.45 Acres. Agreed Pur. Price, $97.00. Pur. Price Paid, $97.00. Int. Paid, $———. Deed issued Mch. 29th, 1877, to B. D. Wilson. Patent No. 1. Issued Mch. 29th, 1876, for all land described above.

Contract No. 3812.

Issued July 17th, 1884, to P. Wilhelm Poulson. For Lots 2 and 3 of Sec. 5, T. 1 S., R. 12 W., S. B. M. (Described in Exhibit "A," and also in Exhibit "B." Within primary limits of S. P. R. R. Branch-line grant.) 6.87 Acres. Agreed Pur. Price, $20.61. Pur. Price Paid, $20.61. Int.

Paid, $———. Deed issued July 17th, 1884, to P. Wilhelm Poulson. Patent No. 2. Issued Apl. 4th, 1879, for all land described above.

Contract No. 748.

Issued Sept. 30th, 1879, to Hancock M. Johnston. For N. E. ¼ of Sec. 7, T. 1 S., R. 12 W., S. B. M. (Described in Exhibit "A," and also in Exhibit "B." Within primary limits S. P. R. R. Branch-line grant.) 160 Acres. Agreed Pur. Price, $480. Pur. Price Paid, $480. Int. Paid $180.80. Deed issued July 11th, 1884, to Hancock M. Johnston. Patent No. 2. Issued Apl. 4th, 1879, for all land described above.

Contract No. 470.

Issued Dec. 8th, 1876, to Hancock M. Johnston. For N. E. ¼ of S. W. ¼ of Sec. 7, T. 1 S., R. 12 W., S. B. M. (Described in Exhibit "A," and also in Exhibit "B." Within primary limits S. P. R. R. Branch-line grant). 40 Acres. Agreed Pur. Price, $140. Pur. Price Paid, $140. Int. Paid, $72.80. Deed issued July 10th, 1883, to Hancock M. Johnston. Patent No. 1. Issued Mch. 29th, 1876, for all land described above.

Contract No. 2584.

Issued Nov. 18th, 1882, to H. M. Johnston. For Lots 3 and 4 of Sec. 7, T. 1 S., R. 12 W., S. B. M. (Described in Exhibit "A," and also in Exhibit "B." Within primary limits S. P. R. R. Branch-line grant.) 83.16 Acres. Agreed Pur. Price, $498.96. Pur. Price Paid, $498.96. Int. paid, $44.24. Deed issued June 24th, 1884, to H. M.

Johnston. Patent No. 4. Issued June 26th, 1882, for all land described above.

Contract No. 882.

Issued Oct. 14th, 1880, to Mrs. Alice V. Slosson. For Lots 1 and 2 of Sec. 11, T. 1 S., R. 12 W., S. B. M. (Described in Exhibit "A," and also in Exhibit "B." Within primary limits S. P. R. R. Branch-line grant.) 34.40 Acres. Agreed Pur. Price, $860. Pur. Price Paid, $860. Int. Paid, $4.00. Deed issued Nov. 23rd, 1880, to Mrs. Alice V. Slosson. Patents No. 1 and 2. Issued Apr. 4th, 1879, and Mch. 28th, 1876, for all land described above.

Contract No. 716.

Issued June 24th, 1879, to Mirah Jesus de Shorb, Annie Wilson and Ruth Wilsos. For N. W. ¼ of N. W. ¼ of Sec. 11, T. 1 S., R. 12 W., S. B. M. (Described in Exhibit "A," and also in Exhibit "B." Within primary limits S. P. R. R. Branch-line grant.) 40 Acres. Agreed Pur. Price, $787. Pur. Price Paid, $787. Int. Paid, $———. Deed issued June 25th, 1879, to Mirah Jesus de Shorb, Annie Wilson and Ruth Wilson. Patent No. 2. Issued Apl. 4th, 1879, for all land described above.

Contract No. 810.

Issued May 17th, 1880, to David F. Hall and Henry Hamilton, Trustees. For S. E. ¼ of N. W. ¼ and N. E. ¼ of S. W. ¼ of Sec. 11, T. 1 S., R. 12 W., S. B. M. (Described in Exhibit "A," and also in Exhibit "B." Within primary limits S. P. R. R. Branch-line grant.) 80 Acres. Agreed Pur. Price, $800. Pur. Price Paid, $800.

Int. paid, $———. Deed issued May 17th, 1880, to David F. Hall and Henry Hamilton, Trustees. Supplemental Deed issued June 16th, 1880, to David F. Hall and Henry Hamilton. Patent No. 1. Issued Mch. 29th, 1876, for all land described above.

Contract No. 2431.

Issued Oct. 4th, 1882, to Solomon Richardson. For E. ½ of N. E. ¼ of Sec. 13, T. 1 S., R. 12 W., S. B. M., (Described in Exhibit "A," and also in Exhibit "B." Within preliminary limits S. P. R. R. Branch-line grant.) 80 Acres. Agreed Pur. Price, $2400. Pur. Price Paid, $2400. Int. Paid, $96.32. Deed issued July 10th, 1883, to Solomon Richardson. Patent No. 2. Issued Apl. 4th, 1879, for all land described above.

Contract No. 543.

Issued Mch. 23rd, 1877, to J. de Barth Shorb. For N. E. ¼ of Sec. 15, T. 1 S., R. 12 W., S. B. M. (Described in Exhibit "A," and also in Exhibit "B." Within primary limts S. P. R. R. Branch-line grant.) 160 Acres. Agreed Pur. Price, $4000. Pur. Price Paid, $4000. Int. Paid, $1600. Deed issued Mch. 28th, 1882, to the Lake Vineyard Land and Water Association. Patent No. 1. Issued Mch. 29th, 1876, for all land described above.

Contract No. 504.

Issued Jany. 9th, 1877, to Catalina Batz. For S. E. ¼ of S. E. ¼ and N. E. ¼ of Sec. 17, T. 1 S., R. 12 W., S. B. M. (Described in Exhibit "A," and also in Exhibit "B."

Within primary limits S. P. R. R. Branch-line grant.) 200 Acres. Agreed Pur. Price, $1400. Pur. Price Paid, $1400. Int. Paid, $——. Deed issued Jany. 26th, 1877, to Catalina Batz. Patent No. 1. Issued Mch. 29th, 1876, for all land described above.

Contract No. 506.

Issued Jany. 9th, 1877, to Catilina Batz. For N. E. ¼ of S. E. ¼ of Sec. 17, T. 1 S., R. 12 W., S. B. M. (Described in Exhibit "A," and also in Exhibit "B." Within primary limits S. P. R. R. Branch-line grant.) 40 Acres. Agreed Pur. Price, $1.00. Pur. Price Paid, $1.00. Int. Paid, $——. Deed issued Jany. 10th, 1877, to Catalina Batz. Patent No. 1. Issued Mch. 29th, 1876, for all land described above.

Contract No. 505.

Issued Jany. 9th, 1877, to Catalina Batz. For N. ½ of S. E. ¼ of Sec. 19, T. 1 S., R. 12 W., S. B. M. (Described in Exhibit "A," and also in Exhibit "B." Within primary limits S. P. R. R. Branch-line grant.) 80 Acres. Agreed Pur. Price, $560. Pur. Price Paid, $560. Int. Paid, $——. Deed issued Jany. 26th, 1877, to Catalina Batz. Patent No. 1. Issued Mch. 29th, 1876, for all land described above.

Contract No. 804.

Issued Apl. 16th, 1880, to James R. Brown. For N. W. ¼ of N. W. ¼ of Sec. 19, T. 1 S., R. 12 W., S. B. M. (Described in Exhibit "A," and also in Exhibit "B." Within primary limits S. P. R. R. Branch-line grant.) 42.87 Acres. Agreed Pur. Price, $235.78. Pur. Price

Paid, $235.78. Int. Paid, $28.30. Deed issued June 12th, 1882, to James R. Brown. Patent No. 2. Issued Apl. 4th, 1879, for all land described above.

Contract No. 746.

Issued Sept. 26th, 1879, to Catalina Batz. For N. W. ¼ of S. W. ¼ and N. ½ of Sec. 29, T. 1 S., R. 12 W., S. B. M. (Described in Exhibit "A," and also in Exhibit "B." Within primary limits S. P. R. R. Branch-line grant.) 360 Acres. Agreed Pur. Price, $1710. Pur. Price Paid, $1710. Int. Paid, $——. Deed issued Sept. 30th, 1879, to Catalina Batz. Patent No. 2. Issued Apl. 4th, 1879, for all land described above.

Contract No. 747.

Issued Sept. 26th, 1879, to Alexander Repetto. For S. E. ¼ of Sec. 29, T. 1 S., R. 12 W., S. B. M. (Described in Exhibit "A," and also in Exhibit "B." Within primary limits S. P. R. R. Branch-line grant.) 160 Acres. Agreed Pur. Price, $760. Pur. Price Paid, $760. Int. Paid, $——. Deed issued Sept. 30th, 1879, to Alexander Repetto. Patent No. 2. Issued Apl. 4th, 1879, for all land described above.

Contract No. 1508.

Issued Oct. 27th, 1881, to Jean Pedelaborde and Francisco S. Pedelaborde. For E. ½ N. E. ¼, E. ½ of S. E. ¼ and N. W. ¼ of Sec. 31, T. 1 S., R. 12 W., S. B. M. (Described in Exhibit "A," and also in Exhibit "B." Within primary limits S. P. R. R. Branch-line grant.) 327.61 Acres. Agreed Pur. Price, $2773.27. Pur. Price Paid, $2773.27. Int. Paid, $394.73. Deed issued May 20th,

1884, to Jean Pedelaborde and Francisco S. Pedelaborde. Patent No. 1. Issued Mar. 29th, 1876, for all land described above.

Contract No. 2975.

Issued Dec. 26th, 1883, to Milton Santee. For Lot 1 of Sec. 11, T. 1 S., R. 13 W., S. B. M. (Described in Exhibit "A," but not in Exhibit "B." Within primary limits S. P. R. R. Branch-line grant.) 19/100 Acres, Agreed Pur. Price, $9. Pur. Price Paid, $9. Int. Paid, $——. Deed issued Feby. 5th, 1884, to Milton Santee. Patent No. 1. Issued Mch. 29th, 1876, for all land described above.

Contract No. 470.

Issued Dec. 8th, 1876, to Hancock M. Johnston. For N. E. ¼ of N. E. ¼, S. E. ¼ of S. E. ¼ and Lots 1 and 4 of Sec. 13, T. 1 S., R. 13 W., S. B. M. (Described in Exhibit "A," but not in Exhibit "B." Within primary limits S. P. R. R. Branch-line grant). 9.28 Acres. Agreed Pur. Price, $991.30. Pur. Price Paid, $991.30. Int. Paid, $515.45 Deed issued July 10th, 1883, to Hancock M. Johnston. Patent No. 1. Issued Mch. 29th, 1876, for all land described above.

Contract No. 2322.

Issued May 29th, 1882, to James R. Brown. For Lots 3 and 4 of Sec. 25, T. 1 S., R. 13 W., S. B. M. (Described in Exhibit "A," and also in Exhibit "B." Within primary limits S. P. R. R. Branch-line grant.) 18.57 Acres. Agreed Pur. Price, $185.70. Pur. Price Paid, $185.70.

Int. Paid, $.90. Deed issued July 12th, 1882, to James R. Brown. Patent No. 2. Issued Apl. 4th, 1879, for all land described above.

Contract No. 3615.

Issued May 26th, 1884, to Charles Yoerger. For Lot 10 of Sec. 3, T. 1 S., R. 14 W., S. B. M. (Described in Exhibit "A," and also in Exhibit "B." Within primary limits S. P. R. R. Branch-line grant.) 40.66 Acres. Agreed Pur. Price, $203.30. Pur. Price Paid, $203.30. Int. Paid, $34.14. Deed issued June 20th, 1887, to Charles Yoerger. Patent No. 6. Issued Dec. 27th, 1883, for all land described above.

Contract No. 3614.

Issued May 26th, 1884, to Ivar A. Weid. For S. ½ of N. E. ¼ of Sec. 3, T. 1 S., R. 14 W., S. B. M. (Described in Exhibit "A," and also in Exhibit "B." Within primary limits S. P. R. R. Branch-line grant.) 80 Acres. Agreed Pur. Price, $200. Pur. Price Paid, $200. Int. Paid, $32.60. Deed issued May 4th, 1887, to Ivar A. Weid. Patent No. 6. Issued Dec. 27th, 1883, for all land described above.

Contract No. 507.

Issued Jany. 10th, 1877, to Ivar A. Weid. For E. ½ of S. E. ¼ and Lots 1 and 2 of Sec. 3, T. 1 S., R. 14 W., S. B. M. (Described in Exhibit "A," and also in Exhibit "B." Within primary limits S. P. R. R. Branch-line grant) 124.53 Acres. Agreed Pur. Price, $373.59. Pur. Price Paid, $373.59. Int. paid, $189.45. Deed is-

sued Jany. 19th, 1884, to L. J. Rose. Patent No. 1. Issued Mch. 29th, 1876, for all land described above.

Contract No. 3625.

Issued May 26th, 1884, to H. K. S. O'Melveny and George Allen. For S. W. ¼ of N. W. ¼ and Lots 3, 4, 5 and 7 of Sec. 3, T. 1 S., R. 14 W., S. B. M. (Described in Exhibit "A," and also in Exhibit "B." Within primary limits S. P. R. R. Branch-line grant.) 139.32 Acres. Agreed Pur. Price, $348.30. Pur. Price Paid, $348.30. Int. paid, $94. Deed issued Mch. 26th, 1889, to John L. Plummer. Patent No. 6. Issued Dec. 27th, 1883, for all land described above.

Contract No. 3617.

Issued May 26th, 1884, to M. L. Yager. For E. ½ of S. W. ¼, S. W. ¼ of S. W. ¼, E. ½ of N. E. ¼ and S. E. ¼ of Sec. 5, T. 1 S., R. 14 W., S. B. M. (Described in Exhibit "A," and also in Exhibit "B." Within primary limits ——— Branch-line grant.) 360.18 Acres. Agreed Pur. Price, $900.45. Pur. Price Paid, $900.45. Int. paid, $249.10. Deed issued May 9th, 1889, to M. L. Yager. Patent No. 6. Issued Dec. 27th, 1883, for all land described above.

Contract No. 3616.

Issued May 26th, 1884, to Oliver Johnson. For N. W. ¼ of S. W. ¼, W. ½ of N. E. ¼ and N. W. ¼ of Sec. 5, T. 1 S., R. 14 W., S. B. M. (Described in Exhibit "A" and also Exhibit "B." Within primary limits S. P. R. R. Branch-line grant.) 280.36 Acres. Agreed Pur. Price, $700.90. Price Paid, $700.90. Int. paid, $196.25. Deed

issued June 3rd, 1889, to Oliver Johnson. Patent No. 6. Issued Dec. 27th, 1883, for all land described above.

Contract No. 3619.

Issued May 26th, 1884, to W. H. Carlin. For E ½ of N. E. ¼ of Sec. 7, T. 1 S., R. 14 W., S. B. M. (Described in Exhibit "A" and also in Exhibit "B." Within primary limits S. P. R. R. Branch-line grant.) $80.00 Acres. Agreed Pur. Price, $200. Pur. Price Paid, $200. Int. paid, $1.70. Deed issued Aug. 1st, 1884, to W. H. Carlin. Patent No. 6. Issued Dec. 27th 1883, for all land described above.

Contract No. 3618.

Issued May 26th, 1884, to George Cate. For W. ½ of N. E. ¼ of Sec. 7, T. 1 S., R. 14 W., S. B. M. (Described in Exhibit "A," and also in Exhibit "B." Within primary limits S. P. R. R. Branch-line grant.) 80.00 Acres. Agreed Pur. Price, $200.00. Pur. Price Paid, $200.00. Int. paid, $44.80. Deed issued July 16th, 1888, to F. B. Alderson. Patent No. 6. Issued Dec. 27th, 1883, for all land described above.

Contract No. 3624.

Issued May 26th, 1884, to William W. White. For N. W. ¼ of Sec. 7, T. 1 S., R. 14 W., S. B. M. (Described in Exhibit "A," and also in Exhibit "B." Within primary limits S. P. R. R. Branch-line grant.) 160.44 Acres. Agreed Pur. Price, $320.88. Pur. Price Paid, $320.88. Int. paid, $17.97. Deed issued June 5th, 1885, to William W. White. Patent No. 6. Issued Dec. 27th, 1883, for all land described above.

Contract No. 481.

Issued Dec. 26th, 1876, to George Cate. For N. ½ of S. E. ¼ and Lot 3 of Sec. 7, T. 1 S., R. 14 W., S. B. M. (Described in Exhibit "A," and also in Exhibit "B." Within primary limits S. P. R. R. Branch-line grant.) 113.33 Acres. Agreed Pur. Price, $679.98. Pur. Price Paid, $679.98. Int. Paid, $269.43. Deed issued Jany. 7, 1882, to George Cate. Patent No. 1. Issued Mch. 29, 1896, for all land described above.

Contract No. 508.

Issued Jany. 11th, 1877, to Melbourne W. Sinnott. For S. W. ¼ of S. E. ¼ of Sec. 7, T. 1 S., R. 14 W., S. B. M. (Described in Exhibit "A," and also in Exhibit "B." Within primary limits S. P. R. R. Branch-line grant.) 40.00 Acres. Agreed Pur. Price, $240. Pur. Price Paid, $240. Int. paid, $87.47. Deed issued Aug. 2nd, 1881, to Melbourne W. Sinnott. Patent No. 1. Issued Mch. 29th, 1879, for all land described above.

Contract No. 491.

Issued Jany. 2nd, 1877. To Ivar A. Weid. For N. W. ¼ of N. W. ¼ of Sec. 11, T. 1 S., R. 14 W., S. B. M. (Described in Exhibit "A," and also in Exhibit "B." within primary limits S. P . R. R. Branch-line grant.) 40 Acres. Agreed Pur. Price $160. Pur. Price Paid, $160. Int. paid, $———. Deed issued Jany. 3d, 1877 to Ivar A. Weid. Patent No. 1. Issued Mch. 29th, 1876, for all land described above.

Contract No. 492.

Issued Jany. 2nd, 1877, to William H. Hill. For E. ½ of S. E. ¼ of Sec. 11, T. 1 S., R. 14 W., S. B. M.

(Described in Exhibit "A," and in Exhibit "B." Within primary limits S. P. R. R. Branch-line grant.) 80 Acres. Agreed Pur. Price, $800. Pur. Price Paid, $800. Int. paid, $318.05. Deed issued Dec. 24th, 1881, to Jennie P. Hill. Patent No. 1. Issued Mch. 29th, 1876, for all land described above.

Contract No. 482.

Issued Dec. 26th, 1876, to James Mattison Sutton. For W. ½ of S. E. ¼ of Sec. 11, T. 1 S., R. 14 W., S. B. M. (Described in Exhibit "A," and also in Exhibit "B." Within primary limits S. P. R. R. Branch-line grant.) 80 Acres. Agreed Pur. Price, $800. Pur. Price Paid. $800. Int. paid, $309.35. Deed issued Oct. 26th, 1881, to James Mattison Sutton. Patent No. 1. Issued Mch. 29th, 1876, for all land described above.

Contract No. 529.

Issued Feby. 19th, 1877, to Joseph M. Sherburne. For Lots 1, 2, 3 and 4 of Sec. 23, T. 1 S., R. 14 W., S. B. M. (Described in Exhibit "A," and also in Exhibit "B." Within primary limits S. P. R. R. Branch-line grant) 51.12 Acres. Agreed Pur. Price, $613.44. Pur. Price Paid, $613.44. Int. paid, $———. Deed issued Feb. 23rd, 1887, to Joseph M. Sherburne. Patent No. 1. Issued Mch. 29th, 1876, for all land described above.

Contract No. 1670.

Issued Nov. 9th, 1881, to Germani Pellissier. For N. W. ¼ of Sec. 25, T. 1 S., R. 14 W., S. B. M. (Described in Exhibit "A," and also in Exhibit "B." Within primary limits S. P. R. R. Branch-line grant.) 160 acres.

Agreed Pur. Price, $3200. Pur. Price Paid, $3200. Int. paid, $403.20. Deed issued June 24th, 1884, to Germani Pellissier. Patent No. 2. Issued Apl. 4th, 1879, for all land described above.

Contract No. 3621.

Issued May 26th, 1884, to James Mair. For Lot 1, S. E. ¼ of N. E. ¼, N. ½ of S. E. ¼, S. E. ¼ of S. E. ¼, E. ½ of S. W. ¼ of Sec. 1, T. 1 S., R. 15 W., S. B. M. (Described in Exhibit "A," and also in Exhibit "B." Within primary limits S. P. R. R. Branch-line grant.) 280 Acres. Agreed Pur. Price, $660. Pur. Price Paid, $660. Int. paid, $———. Deed issued May 28th, 1884, to James Mair. Patent No. 6. Issued Dec. 27th, 1883, for all land described above.

Contract No. 3622.

Issued May 26th, 1884, to M. J. Golden. For E. ½ of N. W. ¼; S. W. ¼ of N. W. ¼ and Lot 2 of Sec. 1, T. 1 S., R. 15 W., S. B. M. (Described in Exhibit "A," but not in Exhibit "B." Within primary limits S. P. R. R. Branch-line grant.) 160Acres. Agreed Pur. Price Paid, $320. Pur. Price Paid, $320. Int. paid, $145.89. Deed issued May 30, 1896, to M. J. Golden. Patent No. 6. Issued Dec. 27, 1883, for all land described above.

Contract No. 3620.

Issued May 26th, 1884, to Mrs. C. Tullis. For S. W. ¼ of S. E. ¼ of Sec. 1, T. 1 S., R. 15 W., S. B. M. (Described in Exhibit "A," and also in Exhibit "B." Within primary limits S. P. R. R. Branch-line grant.) 40 Acres. Agreed Pur. Price, $100. Pur. Price Paid, $100. Int.

paid, $———. Deed issued May 28, 1884, to Mrs. C. Tullis Patent No. 6. Issued Dec. 27, 1883, for all land described above.

Contract No. 3623.

Issued May 26, 1884, to Noah Levering. For S. W. ¼ of S. W. ¼ of Sec. 1, T. 1 S., R. 15 W., S. B. M. (Described in Exhibit "A," but not in Exhibit "B." Within primary limits S. P. R. R. Branch-line grant.) 40 Acres. Agreed Pur. Price, $100.00 Pur. Price Paid, $100.00. Int. paid, $28.00. Deed issued June 3, 1889, to Noah Levering. Patent No. 6. Issued Dec. 27, 1883, for all land described above.

Contract No. 8010.

Issued Aug. 11, 1887, to H. S. Bridge. For N. W. ¼ of S. W. ¼ of Sec. 1, T, 1 S., R. 15 W., S. B. M. (Described in Exhibit "A," but not in Exhibit "B." Within primary limits S. P. R. R. Branch-line grant.) 40 Acres. Agreed Pur. Price, $100.00. Pur. Price Paid, $100.00. Int. paid, $47.80. Deed issued Feb. 28, 1896, to Leander Shores. Patent No. 6. Issued Dec. 27, 1883, for all land described above.

Contract No. 3629.

Issued May 26, 1884, to T. J. Moffett. For W. ½ of S. E. ¼, and W. ½ of N. E. ¼ of Sec. 11, T. 1 S., R. 15 W., S. B. M. (Described in Exhibit "A," and also in Exhibit "B," Within primary limits S. P. R. R. Branch-line grant.) 160 Acres. Agreed Pur. Price, $320. Pur. Price Paid, $320. Int. paid, $———. Deed issued May 28, 1884, to T. J. Moffett. Patent No 6. Issued Dec. 27, 1883, for all land described above.

Contract No. 3628.

Issued May 26, 1884, to H. E. Martens. For N. E. ¼ of S. E. ¼ and S. E. ¼ of N. E. ¼ of Sec. 11, T. 1 S., R. 15 W., S. B. M. (Described in Exhibit "A," and also in Exhibit "B," Within primary limits S. P. R. R. Branch-line grant.) 80 Acres. Agreed Pur. Price, $160. Pur. Price Paid, $160. Int. paid, $———. Deed issued May 28, 1884, to H. E. Martens. Patent No. 6. Issued Dec. 27, 1883, for all land described above.

Contract No. 3623.

Issued May 26, 1884, to Noah Levering. For N. E. ¼ of N. E. ¼ of Sec. 11, T. 1 S., R. 15 W., S. B. M. (Described in Exhibit "A," but not in Exhibit "B." Within primary limits S. P. R. R. Branch-line grant.) 40 Acres. Agreed Pur. Price, $80. Pur. Price Paid, $80. Int. paid, $22.40. Deed issued June 3rd, 1889, to Noah Levering. Patent No. 6. Issued Dec. 27, 1883, for all land described above.

Contract No. 3627.

Issued May 26, 1884, to Pierce E. Benedict. For S. ½ of N. W. ¼ and S. W. ¼ of Sec. 11, T. 1 S., R. 15 W., S. B. M. (Described in Exhibit "A," and also in Exhibit "B." Within primary limits S. P. R. R. Branch-line grant.) 240 Acres. Agreed Pur. Price, $400.80. Pur. Price Paid, $400.80. Int. paid, $———. Deed issued May 28, 1884, to Pierce E. Benedict. Patent No. 6. Issued Dec. 27, 1883, for all land described above.

Contract No. 3626.

Issued May 26, 1884, to Mary F. Ritchie. For S. E.

¼ of S. E. ¼ of Sec. 11, T. 1 S., R. 15 W., S. B. M. (Described in Exhibit "A," and also in Exhibit "B." Within primary limits S. P. R. R. Branch-line grant.) 40 Acres. Agréed Pur. Price, $120.00. Pur. Price Paid, $120.00. Int. paid, $———. Deed issued May 28, 1884, to Mary F. Ritchie. Patent No. 6. Issued Dec. 27, 1883, for all land described above.

Contract No. 6656.

Issued April 4, 1887, to B. Chandler. For Lot 1 of Sec. 3, T. 2 S., R. 11 W., S. B. M. (Described in Exhibit "A," and also in Exhibit "B," Within primary limits S. P. R. R. Branch-line grant.) 21.35 Acres. Agreed Pur. Price, $149.45. Pur. Price Paid, $149.45. Int. paid, $3.81. Deed issued Oct. 25, 1887, to B. Chandler. Patent No. 1. Issued Mch. 29, 1876, for all land described above.

Contract No. 1281.

Issued Oct. 6, 1881, to Robert Turnbull. For N. E. ¼ of S. E. ¼ and S. ½ of S. E. ¼ of Sec. 9, T. 2 S., R. 11 W., S. B. M. (Described in Exhibit "A," and also in Exhibit "B." Within primary limits S. P. R. R. Branch-line grant.) 120 Acres. Agreed Pur. Price, $300. Pur. Price Paid, $300. Int. paid, $4.20, Deed issued Jany. 21, 1882, to Robert Turnbull. Patent No. 1. Issued Mch. 29, 1876, for all land described above.

Contract No. 835.

Issued July 26, 1880, to Alice Woolfskill Barrows. For Lots 1 and 2 of Sec. 3, T. 2 S., R. 13 W., S. B. M. (Described in Exhibit "A," and also in Exhibit "B." Within

primary limits S. P. R. R. Branch-line grant.) 4 Acres. Agreed Pur. Price, $250. Pur. Price Paid, $250. Int. paid, $———. Deed issued July 28, 1880, to Alice Woolfskill Barrows. Patent No. 1. Issued Mch. 29, 1876, for all land described above.

Contract No. 2063.

Issued Jany. 23, 1882, to Martin Vaughan. For Frac. of Lot 1, in Sec. 5, T. 2 S., R. 13 W., S. B. M. (Described in Exhibit "A," and also in Exhibit "B." Within primary limits S. P. R. R. Branch-line grant.) .07 Acres. Agreed Pur. Price, $60. Pur. Price Paid, $60. Int. paid, $———. Deed issued Feby. 14, 1882, to Martin Vaughan. Patent No. 1. Issued Mch. 29, 1876, for all land described above.

Contract No. 2074.

Issued Feb. 3, 1882, to James E. Blair. For Frac. of Lot 1 in Sec. 5, T. 2 S., R. 13 W., S. B. M. (Described in Exhibit "A," and also in Exhibit "B." Within primary limits S. P. R. R. Branch-line grant.) 26-100 Acres. Agreed Pur. Price, $60. Pur. Price Paid, $60. Int. paid, $———. Deed issued Feb. 14, 1882, to James E. Blair. Patent No. 1. Issued Mch. 29, 1876, for all land described above.

Contract No. 2508.

Issued Oct. 24, 1882, to Camille Garnier. For S. ½ of N. E. ¼ of Sec. 11, T. 2 S., R. 14 W., S. B. M. (Described in Exhibit "A," and also in Exhibit "B." Within primary limits S. P. R. R. Branch-line grant.) 80 Acres. Agreed Pur. Price, $6400. Pur. Price Paid, $6400. Int.

paid, $———. Deed issued Oct. 27, 1882, to Camille Garnier. Patent No. 4. Issued June 26, 1882, for all land described above.

Contract No. 2044.

Issued Jany. 11, 1882, to E. L. Spitley and James T. Hoblet. For S. W. ¼ of Sec. 13, T. 2 S., R. 14 W., S. B. M. (Described in Exhibit "A," and also in Exhibit "B." Within primary limts S. P. R. R. Branch-line grant.) 160 Acres. Agreed Pur. Paid Price, $4974.80. Pur. Price Paid, $4974.80. Int. paid, $———. Deed issued Jany. 12, 1882, to E. L. Spitley and James T. Hoblit. Patent No. 1. Issued Mch. 29, 1876, for all land described above.

Contract No. 1672.

Issued Nov. 9, 1881, to Louis Sentous. For all Fracl. Sec. 17, T. 2 S., R. 14 W., S. B. M. (Described in Exhibit "A," and also in Exhibit "B." Within primary limits S. P. R. R. Branch-line grant.) 392.59 Acres. Agreed Pur. Price, $2781.47. Pur. Price Paid, $2781.47. Int. paid, $160.89. Deed issued Jany. 4, 1883, to Louis Sentous. Patent No. 1. Issued Mch. 29, 1876, for all land described above.

Contract No. 2211.

Issued Mch. 23, 1882, to R. W. Waterman. For S. W. ¼ of N. E. ¼, W. ½ of S. E. ¼ and W. ½ of Sec. 11, T. 1 N., R. 4 W., S. B. M. (Described in Exhibit "A," and also in Exhibit "B." Within primary limits S. P. R. R. Branch-line grant.) 440 Acres. Agreed Pur. Price, $2166.15. Pur. Price Paid, $2166.15. Int. paid, $———.

Quitclaim deed issued Apl. 3, 1882, to R. W. Waterman. Patent No. 9. Issued Jany. 9, 1895, for all acres of land described above.

Contract No. 3026.

Issued Jany. 11, 1884, to Aaron Harrison. For Fracl. S. W. ¼ of Sec. 13, T. 1 N., R. 4 W., S. B. M. (Described in Exhibit "A," and also in Exhibit "B." Within primary limits S. P. R. R. Branch-line grant.) 113.54 Acres. Agreed Pur. Price, $1135.40. Pur. Price Paid, $1135.40. Int. paid, $194.26. Deed issued Feby. 24, 1887, to Aaron Harrison. Patent No. 6. Issued Dec. 27, 1883, for all land described above.

Contract No. 4642.

Issued June 1, 1885, to H. H. Linville. For Fracl. N. W. ¼ of Sec. 27, T. 1 N., R. 5 W., S. B. M. (Described in Exhibit "A," but not in Exhibit "B." Within primary limits S. P. R. R. Branch-line grant.) 152.40 Acres. Agreed Pur. Price, $762. Pur. Price Paid, $152.40. Int. paid, $341.36. Present owner of Contract, H. H. Linville. Patent No. 6. Issued Dec. 27, 1883, for all land described above.

Contract No. 3554.

Issued May 15, 1884, to Frank Bohnart. For Lots 2 and 3 of N. E. ¼ of Sec. 27, T. 1 N., R. 5 W., S. B. M. (Described in Exhibit "A," but not in Exhibit "B." Within primary limits S. P. R. R. Branch-line grant.) 57.91 Acres. Agreed Pur. Price, $347.46. Pur. Price Paid, $347.46. Int. paid, $109.38. Deed issued Jany. 6, 1890,

hibit "A," but not in Exhibit "B," Within primary limits S. P. R. R. Branch-line grant.) 160 Acres. Agreed Pur. Price, $1600. Pur. Price Paid, $1600. Int. paid, $446.75. Deed issued June 3, 1889, to Archibald Martin. Patent No. 6. Issued Dec. 27, 1883, for all land described above.

Contract No. 6210.

Issued Jany. 3, 1887, to T. Banbury. For N. E. ¼ of Sec. 15, T. 1 N., R. 6 W., S. B. M. (Described in Exhibit "A," and also in Exhibit "B." Within primary limits S. P. R. R. Branch-line grant.) 160 Acres. Agreed Pur. Price, $800. Pur. Price Paid, $160. Int paid, $224. Present owner of contract, T. Banbury. Patent No. 6. Issued Dec. 27, 1883, for all land described above.

Contract No. 4411.

Issued Mch. 3, 1885, to F. W. Wood and George S. Safford. For N. W. ¼ of Sec. 15, T. 1 N., R. 6 W, S. B. M. (Described in Exhibit "A," and also in Exhibit "B." Within primary limits S. P. R. R. Branch-line grant.) 160 Acres. Agreed Pur. Price, $1600. Pur. Price Paid, $1600. Int. paid, $451.98. Deed issued Mch. 28, 1890, to Wood and Safford. Patent No. 6. Issued Dec. 27, 1883, for all land described above.

Contract No. 3365.

Issued Mch. 24, 1884, to Mrs. Maria Porter. For E. ½ of S. E. ¼ of Sec. 15, T. 1 N., R. 6 W., S. B. M. (Described in Exhibit "A," and also in Exhibit "B" Within primary limits S, P. R. R. Branch-line grant.) 80 Acres. Agreed Pur. Price, $800. Pur Price Paid, $800. Int.

paid, $263.80. Deed issued Feb. 14, 1891 to Mrs. Maria Porter. Patent No. 6. Issued Dec. 27, 1883, for all land described above.

Contract No. 4312.

Issued Feby. 7, 1885, to T. Banbury. For W. ½ of S. E. ¼ of Sec. 15, T. 1 N., R. 6 W., S. B. M. (Described in Exhibit "A," and also in Exhibit "B." Within primary limits S. P. R. R. Branch-line grant.) 80 Acres. Agreed Pur. Price, $800. Pur Price Paid, $160. Int. paid, $358.40. Present owner of contract, T. Banbury. Patent No. 6. Issued Dec. 27, 1883, for all land described above.

Contract No. 3366.

Issued Mch. 24, 1884, to Chas. H. Morris. For E. ½ of S. W. ¼ of Sec. 15, T. 1 N., R. 6 W., S. B. M. (Described in Exhibit "A," and also in Exhibit "B." Within primary limits S. P. R. R. Branch-line grant.) 80 Acres. Agreed Pur. Price, $800. Pur. Price Paid, $800. Int. paid, $230.07. Deed issued May 17, 1888, to George S. Safford and Fred W. Wood. Patent No. 6. Issued Dec. 27, 1883, for all land described above.

Contract No. 3966.

Issued Oct. 1, 1884, to William Hawker. For W. ½ of S. W. ¼ of Sec. 15, T. 1 N., R. 6 W., S. B. M. (Described in Exhibit "A," and also in Exhibit "B." Within primary limits S. P. R. R. Branch-line grant.) 80 Acres. Agreed Pur. Price, $800. Pur. Price Paid, $800. Int. paid, $220.27. Deed issued Sept. 23, 1889, to F. W. Wood, George S. Safford and Mrs. I. Pigne Dupuytren.

Patent No. 6. Issued Dec. 27, 1883, for all land described above.

Contract No. 5676.

Issued June 17, 1886, to C. Elliott and M. Kelleher. For E. ½ of N. E. ¼ of Sec. 17, T. 1 N., R. 6 W., S. B. M. (Described in Exhibit "A," but not in Exhibit "B." Within primary limits S. P. R. R. Branch-line grant.) 80 Acres. Agreed Pur. Price, $400. Pur. Price Paid, $121.14. Int. paid, $173.44. Present owner of contract, Thomas J. Hoyt. Patent No. 6. Issued Dec. 27, 1883, for all land described above.

Contract No. 10,252.

Issued Mch. 19, 1890, to T. Banbury. For E. ½ of N. E. ¼ and W. ½ of S. E. ¼ of Sec. 23, T. 1 N., R. 6 W., S. B. M. (Described in Exhibit "A," but not in Exhibit "B." Within primary limits S. P. R. R. Branch-line grant.) 160 Acres. Agreed Pur. Price, $1600. Pur. Price Paid, $1600. Int. paid, $171.60. Deed issued Feby. 17, 1892, to T. Banbury. Patent No. 6. Issued Dec. 27, 1883, for all land described above.

Contract No. 3267.

Issued Mch. 3, 1884, to T. Banbury. For S. W. ¼ of N. E. ¼, S. E. ¼ of N. W. ¼ and S. W. ¼ of Sec. 23, T. 1 N., R. 6 W., S. B. M. (Described in Exhibit "A," and also in Exhibit "B." Within primary limits S. P. R. R. Branch-line grant.) 240 Acres. Agreed Pur. Price, $2000. Pur. Price Paid, $2000. Int. paid, $560. Deed Issued Apl. 16, 1889, to T. Banbury. Patent No. 6. Issued Dec. 27, 1883, for all land described above.

Contract No. 6498.

Issued Mch. 16, 1887, to Henry M. Loud. For W. ½ of N. W. ¼ of Sec. 23, T. 1 N., R. 6 W., S. B. M. (Described in Exhibit "A," but not in Exhibit "B." Within primary limits S. P. R. R. Branch-line grant.) 80 Acres. Agreed Pur. Price, $200. Pur. Price Paid, $200. Int. paid, $89.60. Deed issued Mch. 16, 1896, to Henry M. Loud. Patent No. 6. Issued Dec. 27, 1883, for all land described above.

Contract No. 10,253.

Issued Mch. 19, 1890, to William Dickey. For E. ½ of S. E. ¼ of Sec. 23, T. 1 N., R. 6 W., S. B. M. (Described in Exhibit "A," but not in Exhibit "B." Within primary limits S. P. R. R. Branch-line grant.) 80 Acres. Agreed Pur. Price, $800. Pur. Price Paid, $800. Int. paid, $———. Deed issued Mch. 28, 1890, to Dickey. Patent No. 6. Issued Dec. 27, 1883, for all land described above.

Contract No. 3931.

Issued Sept. 24, 1884, to E. H. Forester. For N. W. ¼ of N. W. ¼, N. E. ¼ of N. E. ¼, S. ½ of N. E. ¼, S ½ of N. W. ¼ and S. ½ of Sec. 25, T. 1 N., R. 6 W., S. B. M. (Described in Exhibit "A," but not in Exhibit "B." Within primary limits S. P. R. R. Branch-line grant.) 560 Acres. Agreed Pur. Price, $4200. Pur. Price Paid, $840. Int. Paid, $940.80. Present owner of contract, E. H. Forester. Patent No. 6. Issued Dec. 27, 1883, for all land described above.

Contract No. 3868.

Issued Aug. 20, 1884, to Joseph A. Scott. For N. W. ¼ of N. E. ¼ and N. E. ¼ of N. W. ¼ of Sec. 25, T. 1 N., R. 6 W., S. B. M. (Described in Exhibit "A," and also in Exhibit "B." Within primary limits S. P. R. R. Branch-line grant.) 80 Acres. Agreed Pur. Price, $600. Pur. Price Paid, $600. Int. Paid, $100.80. Deed issued Aug. 29, 1887, to Scott. Patent No. 6. Issued Dec. 27, 1883, for all lands described above.

Contract No. 10,250.

Issued Mch. 15, 1890, to George S. Safford, F. W. Wood and Mrs. Pigne Dupuytren. For N. W. ¼ of N. E. ¼ of Sec. 27, T. 1 N., R. 6 W., S. B. M. (Described in Exhibit "A," and also in Exhibit "B." Within primary limits S. P. R. R. Branch-line grant.) 40 Acres. Agreed Pur. Price, $400. Pur. Price Paid, $80. Int. Paid, $156.80. Present owner of contract George S. Safford, F. W. Wood and Mrs. I. Pigne Dupuytren. Patent No. 6. Issued Dec. 27, 1883, for all land described above.

Contract No. 5678.

Issued June 17, 1886, to C. Elliott. For E. ½ of N. E. ¼ of Sec. 27, T. 1 N., R. 6 W., S. B. M. (Described in Exhibit "A," but not in Exhibit "B." Within primary limits S. P. R. R. Branch-line grant.) 80 Acres. Agreed Pur. Price, $400. Pur. Price Paid, $80. Int. Paid, $134.40. Present owner of contract, George C. Mesnager and Pierce Darancette. Patent No. 6. Issued Dec. 27, 1883, for all land described above.

Contract No. 4411.

Issued Mch. 3, 1885, to F. W. Wood and George Safford. For S. W. ¼ of N. E. ¼, N. W. ¼ of S. E. ¼ and N. W. ¼ of Sec. 27, T. 1 N., R. 6 W., S. B .M. (Described in Exhibit "A," and also in Exhibit "B." Within primary limits S. P. R. Branch-line grant.) 240 Acres. Agreed Pur. Price, $1800. Pur. Price Paid, $1800. Int. Paid, $508.50. Deed issued Mch. 28, 1890, to Wood and Safford. Patent No. 6. Issued Dec. 27, 1883, for all land described above.

Contract No. 4436.

Issued Mch. 13, 1885, to T. Banbury. For E. ½ of S. E. ¼ of Sec. 27, T. 1 N., R. 6 W., S. B. M. (Described in Exhibit "A," but not in Exhibit "B." Within primary limits S. P. R. R. Branch-line grant.) 80 Acres. Agreed Pur. Price, $400. Pur. Price Paid, $400. Int. Paid, $153.40. Deed issued Feb. 9, 1892, to T. Banbury. Patent No. 6. Issued Dec. 27, 1883, for all land described above.

Contract No. 4418.

Issued Mch. 5, 1885, to E. L. Watkins. For S. W. ¼ of S. E. ¼ of Sec. 27, T. 1 N., R. 6 W., S. B. M. (Described in Exhibit "A," and also in Exhibit "B." Within primary limits, S. P. R. R. Branch-line grant.) 40 Acres. Agreed Pur. Price, $400. Pur. Price Paid, $400. Int. Paid, $117.60. Deed issued June 7, 1890, to George S. Safford, F. W. Wood and Mrs. I. Pigne Dupuytren. Patent No. 6. Issued Dec. 27, 1883, for all land described above.

Contract No. 5868.

Issued Aug. 24, 1886, to N. B. Bradley and H. M. Loud. For E. ½ of S. W. ¼ of Sec. 27, T. 1 N., R. 6 W., S. B. M. (Described in Exhibit "A," but not in Exhibit "B." Within primary limits S. P. R. R. Branch-line grant.) 80 Acres. Agreed Pur. Price, $800. Pur. Price Paid, $800. Int. Paid, $5.76. Deed issued Oct. 7, 1887, to N. B. Bradley and H. M. Loud. Patent No. 6. Issued Dec. 27, 1883, for all land described above.

Contract No. 5679.

Issued June 17, 1886, to C. Elliott. For W. ½ of S. W. ¼ of Sec. 27, T. 1 N., R. 6 W., S. B. M. (Described in Exhibit "A," but not in Exhibit "B." Within primary limits S. P. R. R. Branch-line grant.) 80 Acres. Agreed Pur. Price, $200. Pur. Price Paid, $200. Int. Paid, $51.05. Deed issued Jany. 13, 1891, to R. W. Poindexter. Patent No. 6. Issued Dec. 27, 1883, for all land described above.

Contract No. 6160.

Issued Dec. 20th, 1886, to W. H. Carlson. For W. ½ of Sec. 29, T. 1 N., R. 6 W., S. B. M. (Described in Exhibit "A," but not in Exhibit "B." Within primary limits S. P. R. R. Branch-line grant.) 320 Acres. Agreed Pur. Price, $1600. Pur. Price Paid, $320. Int. Paid, $179.20. Present owner of contract, W. H. Carlson. Patent No. 6. Issued Dec. 27, 1883, for all land described above.

Contract No. 3297.

Issued Mch. 10, 1894, to George Chaffey. For E ½ of S. E. ¼ of Sec. 29, T. 1 N., R. 6 W., S. B. M. (Described

in Exhibit "A," and also in Exhibit "B." Within primary limits S. P. R. R. Branch-line grant.) 80 Acres. Agreed Pur. Price, $800. Pur. Price Paid, $800. Int. Paid, $82.13. Deed issued Jany. 12, 1886, to Chaffey, Patent No. 6. Issued Dec. 27, 1883, for all land described above.

Contract No. 3298.

Issued Mch. 10, 1884, to George Chaffey. For W. ½ of S. E. ¼ of Sec. 29, T. 1 N., R. 6 W., S. B. M. (Described in Exhibit "A," but not in Exhibit "B." Within primary limits S. P. R. R. Branch-line grant.) 80 Acres. Agreed Pur. Price, $800. Pur. Price Paid, $800. Int. Paid, $304.31. Deed issued Apr. 21, 1891, to Thomas Thomson. Patent No. 6. Issued Dec. 27, 1883, for all land described above.

Contract No. 4185.

Issued Jany. 7, 1885, to Leslie T. Smith. For E. ½ of N. E. ¼ of Sec. 31, T. 1 N., R. 6 W., S. B. M. (Described in Exhibit "A," and also in Exhibit "B." Within primary limits S. P. R. R. Branch-line grant.) 80 Acres. Agreed Pur. Price, $800. Pur. Price Paid, $800. Int. Paid, $——. Deed issued Jany. 9, 1885, to Smith. Patent No. 6. Issued Dec. 27, 1883, for all land described above.

Contract No. 6089.

Issued Nov. 26, 1886, to W. Taylour English. For N. ½ of S. W. ¼ and W. ½ of N. E. ¼ of Sec. 31, T. 1 N., R. 6 W., S. B. M. (Described in Exhibit "A," but not in Exhibit "B." Within primary limits S. P. R. R. Branch-line grant.) 16.55 Acres. Agreed Pur. Price, $1605.50.

Pur. Price Paid, $452.35. Int. Paid, $737.95. Present owner of contract, John S. Maltman. Patent No. 6. Issued Dec. 27, 1883, for all land described above.

Contract No. 5650.

Issued June 5, 1886, to Wm. T. Baker and H. L. Macneil. For Fracl. N. W. ¼ of Sec. 31, T. 1 N., R. 6 W., S. B. M. (Described in Exhibit "A," but not in Exhibit "B." Within primary limits S. P. R. R. Branch-line grant.) 162.19 Acres. Agreed Pur. Price, $810.95. Pur. Price Paid, $810.95. Int. Paid, $243.03. Deed issued Dec. 2, 1891, to Chas. R. Long and Thos. Thomson. Patent No. 6. Issued Dec. 27, 1883, for all land described above.

Contract No. 10,253.

Issued Mch. 19, 1890, to William Dickey. For W. ½ of S. E. ¼ and S. ½ of S. W. ¼ of Sec. 31, T. 1 N., R. 6 W., S. B. M. (Described in Exhibit "A," but not in Exhibit "B." Within primary limits S. P. R. R. Branch-line grant.) 160.18 Acres. Agreed Pur. Price, $1601.80. Pur. Price Paid, $1601.80. Int. Paid, $ ——. Deed issued Mch, 28, 1890, to Dickey. Patent No. 6. Issued Dec. 27, 1883, for all land described above.

Contract No. 10,265.

Issued Apl. 4, 1890, to William Dickey. For S. E. ¼ of S. E. ¼ of Sec. 31, T. 1 N., R. 6 W., S. B. M. (Described in Exhibit "A," but not in Exhibit "B." Within primary limits S. P. R. R. Branch-line grant.) 40 Acres. Agreed Pur. Price, $400. Pur. Price Paid, $400. Int. Paid,

$——. Deed issued Apl. 8, 1890, to Dickey. Patent No. 6. Issued Dec. 27, 1883, for all land described above.

Contract No. 10,902.

Issued Nov. 7, 1891, to James Hanley. For N. E. ¼ of S. E. ¼ of Sec. 31, T. 1 N., R. 6 W., S. B. M. (Described in Exhibit "A," but not in Exhibit "B." Within primary limits S. P. R. R. Branch-line grant.) 40 Acres. Agreed Pur. Price, $400. Pur. Price Paid, $80. Int. Paid, $44.80. Present owner of contract, Robt. A. Guthrie. Patent No. 6. Issued Dec. 27, 1883, for all land described above.

Contract No. 5869.

Issued Aug. 24, 1886. To N. B. Bradley and H. M. Loud. For N. E. ¼ of Sec. 35, T. 1 N., R. 6 W., S. B. M. (Described in Exhibit "A," but not in Exhibit "B." Within S. P. R. R. Branch-line grant.) 160 Acres. Agreed Pur. Price, $1200. Pur. Price Paid, $1200. Int. Paid $268.80. Deed issued Sept. 16, 1890, to Bradley and Loud. Patent No. 6. Issued Dec. 27, 1883, for all land described above.

Contract No. 5870.

Issued Aug. 24, 1886, to N. B. Bradley and H. M. Loud. For S. E. ¼ of Sec. 35, T. 1 N., R. 6 W., S. B. M. (Described in Exhibit "A," but not in Exhibit "B." Within primary limits S. P. R. R. Branch-line grant.) 160 Acres. Agreed Pur. Price, $1200. Pur. Price Paid, $1200. Int. Paid, $268.80. Deed issued Sept, 16th, 1890, to Bradley & Loud. Patent No. 6. Issued Dec. 27, 1883, for all land described above.

Contract No. 5209.

Issued Jany. 12, 1886, to M. E. Wood. For N. W. ¼ of Sec. 35, T. 1 N., R. 6 W., S. B. M. (Described in Exhibit "A," but not in Exhibit "B." Within primary limits S. P. R. R. Branch-line grant.) 160 Acres. Agreed Pur. Price, $1200. Pur. Price Paid, $1200. Int. paid, $336. Deed issued Jany. 13, 1891, to Wood. Patent No. 6. Issued Dec. 27, 1883, for all land described above.

Contract No. 5080.

Issued June 17, 1886, to C. Elliott. For S. W. ¼ of Sec. 35, T. 1 N., R. 6 W., S. B. M. (Described in Exhibit "A," but not in Exhibit "B." Within primary limits S. P. R. R. Branch-line grant.) 160 Acres. Agreed Pur. Price, $1200. Pur. Price Paid, $1200. Int. paid, $382.67. Deed issued Mch. 10, 1892. To S. K. McIlhenny. Patent No. 6. Issued Dec. 27, 1883, for all land described above.

Contract No. 3559.

Issued May 15, 1884, to J. C. Sommer. For Lots 1 and 2 of Sec. 21, T. 1 N., R. 7 W., S. B. M. (Described in Exhibit "A," and also in Exhibit "B." Within primary limits S. P. R. R. Branch-line grant.) 68.28 Acres. Agreed Pur. Price, $341.40. Pur. Price Paid, $341.40. Int. paid, $ ———. Deed issued May 16, 1884, to Sommer. Patent No. 6. Issued Dec. 27, 1883, for all land described above.

Contract No. 3558.

Issued May 15, 1884, to H. E. Sontag. For Lots 3 & 4 of Sec. 21, T. 1 N., R. 7 W., S. B. M. (Described in Ex-

hibit "A," and also in Exhibit "B." Within primary limits S. P. R. R. Branch-line grant.) 68.28 Acres. Agreed Pur. Price, $341.40. Pur. Price Paid, $341.40. Int. Paid, $.53. Deed issued June 16, 1884, to Sontag. Patent No. 6. Issued Dec. 27, 1883, for all land described above.

Contract No. 3710.

Issued June 13, 1884, to I. W. Hellman and O. W. Childs. For Fracl. E. ½ of Sec. 27, T. 1 N., R. 7 W., S. B. M. (Described in Exhibit "A," and also in Exhibit "B." Within primary limits S. P. R. R. Branch-line grant.) 173.48 Acres. Agreed Pur. Price, $1,518.42. Pur. Price Paid, $1,518.42. Int. paid, $———. Deed issued June 24, 1884, to Hellman and Childs. Patent No. 6. Issued Dec. 27, 1883, for all land described above.

Contract No. 3557.

Issued May 15, 1884, to A. O. Porter. For N. W. ¼ of N. E. ¼, E. ½ of N. E. ¼, S. E. ¼ of S. E. ¼ and Lots 1, 2, 3 and 4 of Sec. 35, T. 1 N., R. 7 W., S. B. M. (Described in Exhibit "A," and also in Exhibit "B." Within primary limits S. P. R. R. Branch-line grant.) 165.88 Acres. Agreed Pur. Price, $1658.80. Pur. Price Paid, $1658.80. Int. paid, $———. Deed issued May 16, 1884, to Porter. Patent No. 6. Issued Dec. 27, 1883, for all land described above.

Contract No. 773.

Issued Dec. 10, 1879, to Albert A. Dexter, Jr. For N. E. ¼ of N. W. ¼ of Sec. 13, T. 1 N., R. 8 W., S. B. M.

to Frank Bohnart Patent No. 6. Issued Dec. 27, 1883, for all land described above.

Contract No. 3553.

Issued May 15, 1884, to E. H. Morse. For Fracl. S. E. ¼ of Sec. 27, T. 1 N., R. 5 W., S. B. M. (Described in Exhibit "A," and also in Exhibit "B." Within primary limits S. P. R. R. Branch-line grant.) 159.99 Acres. Agreed Pur. Price, $999.94. Pur. Price Paid, $999.94. Int. paid, $146.52. Deed issued Dec. 29, 1886, to E. H. Morse. Patent No. 6. Issued Dec. 27, 1883, for all land described above.

Contract No. 4234.

Issued Jany. 29, 1885, to J. R. Nevin. For S. W. ¼ of Sec. 27, T. 1 N., R. 5 W., S. B. M. (Described in Exhibit "A," but not in Exhibit "B." Within primary limits S. P. R. R. Branch-line grant.) 160 Acres. Agreed Pur. Price, $800. Pur. Price Paid, $800. Int. paid, $221. Deed issued Jany. 9, 1890, to J. R. Nevin. Patent No. 6, Issued Dec. 27, 1883, for all land described above.

Contract No. 6011.

Issued Nov. 1, 1886, to F. W. Wood and George S. Safford. For W. ½ of S. W. ¼ of Sec. 9, T. 1 N., R. 6 W., S. B. M. (Described in Exhibit "A," and also in Exhibit "B." Within primary limits S. P. R. R. Branch-line grant.) 80 Acres. Agreed Pur. Price, $200. Pur. Price Paid, $200. Int. paid, $31.73. Deed issued Sept. 23, 1889, to F. W. Wood and George S. Safford. Patent No. 6. Issued Dec. 27, 1883, for all land described above.

Contract No. 3266.

Issued Mch. 3, 1884, to Michel Sainsevain. For W. ½ of Sec. 11, T. 1 N., R. 6 W., S. B. M. (Described in Exhibit "A," and also in Exhibit "B." Within primary limits S. P. R. R. Branch-line grant.) 320 Acres. Agreed Pur. Price, $800. Pur. Price Paid, $800. Int. paid, $67.-20. Deed issued Sept. 28, 1885, to Jean Louis Sainsevain. Patent No. 6. Issued Mch. 27, 1883, for all land described above.

Contract No. 3264.

Issued Mch. 3, 1884, to A. G. Perdew. For S. ½ of S. E. ¼ of Sec. 13, T. 1 N., R. 6 W., S. B. M. (Described in Exhibit "A," but not in Exhibit "B." Within primary limits S. P. R. R. Branch-line grant.) 80 Acres. Agreed Pur. Price, $800. Pur. Price Paid, $800. Int. paid, $226.15. Deed issued Mch. 27, 1889, to M. Byrne. Patent No. 6. Issued Dec. 27, 1883, for all land described above.

Contract No. 3265.

Issued Mch. 3, 1884, to R. P. Perdew. For N. ½ of S. E. ¼ of Sec. 13, T. 1 N., R. 6 W., S. B. M. (Described in Exhibit "A," but not in Exhibit "B," Within primary limits S. P. R. R. Branch-line grant.) 80 Acres. Agreed Pur. Price, $800. Pur. Price Paid, $800. Int. paid, $309.86. Deed issued Feby. 16, 1891, to M. Byrne. Patent No. 6. Issued Dec. 27, 1883, for all land described above.

Contract No. 3436.

Issued Apl. 17, 1884, to Archibald Martin. For S. W. ¼ of Sec. 13, T. 1 N., R. 6 W., S. B. M. (Decsribed in Ex-

J. L. Howland. Patent No. 2. Issued Apl. 4, 1879, for all land described above.

Contract No. 2851.

Issued Sept. 27, 1883, to William Carthy. For S. W. ¼ of S. W. ¼ of Sec. 21, T. 1 N., R. 8 W., S. B. M. (Described in Exhibit "A," but not in Exhibit "B." Within primary limits S. P. R. R. Branch-line grant.) 40 Acres. Agreed Pur. Price, $100. Pur. Price Paid, $100. Int. paid, $16.32. Deed issued Sept. 24, 1886, to H. Hiller. Patent No. 2. Issued Apl. 4, 1879, for all land described above.

Contract No. 4507.

Issued Apl. 6th, 1885, to Henry H. Colegrove. For N. W. ¼ of S. W. ¼ of Sec. 21, T. 1 N., R. 8 W., S. B. M. (Described in Exhibit "A," and also in Exhibit "B." Within primary limits S. P. R. R. Branch-line grant.) 40 Acres. Agreed Pur. Price, $100. Pur. Price Paid, $100. Int. paid, $———. Deed issued Apl. 13, 1885, to Colegrove. Patent No. 2. Issued Apl. 4, 1879, for all land described above.

Contract No. 7012.

Issued May 3, 1887, to C. Elliott and M. Kelleher. For W. ½ of N. E. ¼ of Sec. 23, T. 1 N., R. 8 W., S. B. M. (Described in Exhibit "A," but not in Exhibit "B." Within primary limits S. P. R. R. Branch-line grant.) 80 Acres. Agreed Pur. Price, $400. Pur. Price Paid, $80. Int. paid, $22.40. Present owner of contract, Elliott & Kelleher. Patent No. 2. Issued Apl. 4, 1879, for all land described above.

Contract No. 2341.

Issued July 7, 1882, to Cyrus T. Mills. For E. ½ of N. E. ¼ of Sec. 23, T. 1 N., R. 8 W., S. B. M. (Described in Exhibit "A," and also in Exhibit "B." Within primary limits S. P. R. R. Branch-line grant.) 80 Acres. Agreed Pur. Price, $400. Pur. Price Paid, $400. Int. paid, $69.75. Deed issued Aug. 19, 1885, to Edward Evey. Patent No. 2. Issued Apl. 4, 1879, for all land described above.

Contract No. 5689.

Issued June 22, 1886, to W. J. Bodenhamer. For Lots 1, 2 and 3 of Sec. 25, T. 1 N., R. 8 W., S. B. M. (Described in Exhibit "A," but not in Exhibit "B." Within primmary limits S. P. R. R. Branch-line grant.) 67.51 Acres. Agreed Pur. Price, $168.77. Pur. Price Paid, $168.77. Int. paid, $11.93. Deed issued Oct. 21, 1887, to Bodenhamer. Patent No. 2, Issued Apl. 4, 1879, for all land described above.

Contract No. 6655.

Issued Apl. 4, 1887, to Wiliam Thorpe. For S. ½ of S. W. ¼ of Sec. 15, T. 1 N., R. 9 W., S. B. M. (Described in Exhibit "A," but not in Exhibit "B." Within primary limits S. P. R. R. Branch-line grant.) 80 Acres. Agreed Pur. Price, $200. Pur. Price Paid, $200. Int. paid, $56. Deed issued Apl. 8, 1892, to Thorpe. Patent No. 6. Issued Dec. 27, 1883, for all land described above.

Contract No. 3866.

Issued Aug. 18, 1884, to Evan Harer. For S. ½ of S. E. ¼ of Sec. 19, T. 1 N., R. 9 W., S. B. M. (Described in

Exhibit "A," but not in Exhibit "B." Within primary limits S. P. R. R. Branch-line grant.) 80 Acres. Agreed Pur. Price, $400. Pur. Price Paid, $400. Int. paid, $36. 40. Deed issued Apl. 5, 1887, to Harer. Patent No. 6. Issued Dec. 27, 1883, for all land described above.

Contract No. 3971.

Issued Oct. 3, 1884, to J. C. West and J. J. West. For N. ½ of S. E. ¼ and S. W. ¼ of Sec. 21, T. 1 N., R. 9 W., S. B. M. (Described in Exhibit "A," but not in Exhibit "B." Within primary limits S. P. R. R. Branch-line grant.) 240 Acres. Agreed Pur. Price, $1200. Pur. Price Paid, $1200. Int. paid, $164.27. Deed issued Mch. 18, 1887, to West and West. Patent No. 6. Issued Dec. 27, 1883, for all land described above.

Contract No. 3970.

Issued Oct. 3, 1884, to W. B. Cullen. For S. ½ of S. E. ¼ of Sec. 21, T. 1 N., R. 9 W., S. B. M. (Described in Exhibit "A," but not in Exhibit "B." Within primary limits S. P. R. R. Branch-line grant.) 80 Acres. Agreed Pur. Price, $400. Pur. Price Paid, $400. Int. paid, $79.70. Deed issued May 1, 1888, to Charles A. H. de Szigethy. Patent No. 6. Issued Dec. 27, 1883, for all land described above.

Contract No. 4025.

Issued Oct. 21, 1884, to W. H. Bowman. For S. W. ¼ of S. W. ¼ of Sec. 15, T. 1 N., R. 10 W., S. B. M. (Described in Exhibit "A," and also in Exhibit "B." Within primary limits S. P. R. R. Branch-line grant.) 40 Acres. Agreed Pur. Price, $100. Pur. Price Paid, $100. Int.

paid, $———. Deed issued Oct. 22, 1884, to Bowman. Patent No. 6. Issued Dec. 27, 1883, for all land described above.

Contract No. 3923.

Issued Sep. 19, 1884, to F. A. Bliss and W. W. Bliss. For E. ½ of N. E. ¼ and fractional S. E. ¼ of Sec. 19, T. 1 N., R. 10 W., S. B. M. (Described in Exhibit "A," but not in Exhibit "B." Within primary limits S. P. R. R. Branch-line grant.) 189.43 Acres. Agreed Pur. Price, $473.57. Pur. Price Paid, $473.57. Int. paid, $159.06. Deed issued Sep. 18, 1899, to Bliss and Bliss. Patent No. 6. Issued Dec. 27, 1883, for all land described above.

Contract No. 3947.

Issued Sep. 25, 1884, to Nelson Van Tassel. For N. E. ¼ of S. W. ¼ and Lot 3 of Sec. 21, T. 1 N., R. 10 W., S. B. M. (Described in Exhibit "A," and also in Exhibit "B." Within primary limits S. P. R. R. Branch-line grant.) 75.55 Acres. Agreed Pur. Price, $377.75. Pur. Price Paid, $377.75. Int. paid, $42.72. Deed issued Oct. 19, 1886, to Van Tassel. Patent No. 6. Issued Dec. 27, 1883, for all land described above.

Contract No. 5743.

Issued July 6, 1886, to Wm. Lacey. For N. E. ¼ of N. E. ¼ and Lot 4 of Sec. 21, T. 1 N., R. 10 W., S. B. M. (Described in Exhibit "A," but not in Exhibit "B." Within primary limits S. P. R. R. Branch-line grant.) 79.89 Acres. Agreed Pur. Price, $199.72. Pur. Price Paid, $39.94. Int. paid, $55.90. Present owner of con-

tract, Wm. Lacey. Patent No. 6. Issued Dec. 27, 1883, for all land described above.

Contract No. 3677.

Issued June 5, 1884, to Philip Shorey. For N. ½ of N. E. ¼ of Sec. 25, T. 1 N., R. 10 W., S. B. M. (Described in Exhibit "A," but not in Exhibit "B." Within primary limits S. P. R. R. Branch-line grant.) 80 Acres. Agreed Pur. Price, $240. Pur. Price Paid, $240. Int. paid, $40.32. Deed issued June 30, 1887, to Shorey. Patent No. 9. Issued Jany. 9, 1885, for all land described above.

Contract No. 4449.

Issued Mch. 17, 1885, to J. S. Vosburg and Wm. Gardner Cogswell. For E. ½ of S. W. ¼, S. E. ¼ and Lot 2 of Sec. 7, T. 1 N., R. 11 W., S. B. M. (Described in Exhibit "A," and also in Exhibit "B." Within primary limits S. P. R. R. Branch-line grant.) 283.75 Acres. Agreed Pur. Price, $464.20. Pur. Price Paid, $464.20. Int. paid, $———. Deed issued Apl. 13, 1885, to Vosburg and Cogswell. Patent No. 8. Issued Aug. 8, 1884, for all land described above.

Contract No. 11,343.

Issued June 15, 1894, to Sarah Ann Brown, wife of J. R. Brown. For N. W. ¼ of N. W. ¼ of Sec. 13, T. 1 N., R. 11 W., S. B. M. (Described in Exhibit "A," but not in Exhibit "B." Within primary limits S. P. R. R. Branch-line grant.) 40 Acres. Agreed Pur. Price, $240. Pur. Price Paid, $48. Int. paid, $13,44. Present owner of contract, Sarah Ann Brown, wife of J. R. Brown.

Patent No. 6. Issued Dec. 27, 1883, for all land described above.

Contract No. 4628.

Issued May 20, 1885, to J. R. Brown, For E. ½ of S. W. ¼ of Sec. 13, T. 1 N., R. 11 W., S. B. M. (Described in Exhibit "A," but not in Exhibit "B." Within primary limits S. P. R. R. Branch-line grant.) 80 Acres. Agreed Pur. Price, $200. Pur. Price Paid, $200. Int. paid, $37.36. Deed issued Oct. 10, 1888, to Wm. D. Smith. Patent No. 1. Issued Mch. 29, 1876, for all land described above.

Contract No. ———.

Issued ———, to ———. For all fractional Sec. 15, T. 1 N., R. 15 W., S. B. M. (Described in Exhibit "A," but not in Exhibit "B." Within the patented limits of the Mexican grant Rancho San Fernando). ——— Acres. Agreed Pur. Price, $———. Pur. Price Paid, $———. Int. paid, $———. Deed issued ———, to ———. Present owner of contract, ———. Patent No. ———. Issued ———, for ———, Acres of land described above.

Contract No. 829.

Issued July 16, 1880, to George A. Macomber & Herbert S. Dickey. For S. ½ of N. E. ¼ of Sec. 17, T. 1 N., R. 11 W., S. B. M, (Described in Exhibit "A," but not in Exhibit "B" Within granted limits S. P. R. R. Branch-line grant.) 80 Acres. Agreed Pur. Price, $200. Pur. Price Paid, $200. Int. paid, $64.86. Deed issued May

24, 1886, to N. C. Carter. Patent No. 1. Issued Mch. 29, 1876, for all land described above.

Contract No. 841.

Issued Aug. 10, 1880, to George A. Macomber & Herbert S. Dickey. For S. E. ¼ of N. W. ¼ of Sec. 17, T. 1 N., R. 11 W., S. B. M. (Described in Exhibit "A," and also in Exhibit "B." Within primary limits S. P. R. R. Branch-line grant.) 40 Acres. Agreed Pur. Price, $100. Pur. Price Paid, $100. Int. paid, $32.04. Deed issued May 24, 1886, to N. C. Carter. Patent No. 1. Issued Mch. 29, 1876, for all land described above.

Contract No. 502.

Issued Jany. 8, 1887, to Nathaniel C. Carter. For N. ½ of S. E. ¼ and Lots 3 and 4 of Sec. 17, T. 1 N., R. 11 W., S. B. M. (Described in Exhibit "A," and also in Exhibit "B." Within primary limits S. P. R. R. Branch-line grant.) 108.77 Acres. Agreed Pur. Price, $543.85. Pur. Price Paid, $543.85. Int. paid, $217.55. Deed issued Jany. 10, 1882, to Carter. Patent No. 1. Issued Mch. 29, 1876, for all land described above.

Contract No. 2299.

Issued Apr. 26, 1882, to H. J. Stevenson. For N. W. ¼ of N. E. ¼ and Lots 3 and 4 of Sec. 23, T. 1. N., R. 11 W., S. B. M. (Described in Exhibit "A," and also in Exhibit "B." With primary limits S. P. R. R. Branch-line grant). 103.49 Acres. Agreed Pur. Price, $258.72. Pur. Price Paid, $258.72. Int. paid, $33.49. Deed issued Aug. 15th, 1884, to W. N. Monroe. Patent No. 1. Issued Mch. 29th, 1876, for all land described above.

Contract No. 2296.

Issued Apl. 21, 1882, to Charles Mueller. For S. W.. ¼ of N. W. ¼ and Lot 1 of Sec. 23, T. 1 N., R. 11 W., S. B. M. (Described in Exhibit "A," and also in Exhibit "B." With primary limits S. P. R. R. Branch-line grant.) 58.62 .Acres. Agreed Pur. Price $234.48. Pur. Price Paid, $234.48. Int. paid, $62.52. Deed issued Feb. 1, 1887, to Mueller. Patent No. 1. Issued Mch. 29, 1876, for all land described above.

Contract No. 743.

Issued Sept. 24, 1879, to Luther Hall. For Lots 1 and 2 of N. E. ¼ of Sec. 3, T. 1 N., R. 12 W., S. B. M. (Described in Exhibit "A," and also Exhibit "B." With primary limits S. P. R. R. Branch-line grant.) 80 Acres. Agreed Pur. Price, $200. Pur. Price Paid, $200. Int. paid, $———. Deed issued, Sept. 24th, 1879 to Hall. Patent No. 2. Issued Apl. 4th, 1879, for all land described above.

Contract No. 784.

Issued Feb. 6, 1880, to R. J. Forsyth. For Lot 3 of N. W. ¼ of Sec. 3, T. 1 N., R. 12 W., S. B. M. (Described in Exhibit "A," and also in Exhibit "B." Within primary limits S. P. R. R. Branch-line grant.) 39.88 Acres. Agreed Pur. Price, $119.64. Pur. Price Paid, $119.64. Int. paid, $———. Deed issued Feb. 7, 1880, to Forsyth. Patent No. 2. Issued Apr. 4, 1879, for all land described above.

Contract No. 735.

Issued Sep. 15, 1879, to W. F. P. Noble. For Lot 4 of N. W. ¼ of Sec. 3, T. 1 N., R. 12 W., S. B. M. (Described

in Exhibit "A," and also in Exhibit "B." Within primary limits S. P. R. R. Branch-line grant.) 40.24 Acres. Agreed Pur. Price, $100.60. Pur. Price Paid, $100.60. Int. paid, $———. Deed issued Sept. 17, 1879, to Noble. Patent No. 2. Issued Apl. 4, 1879, for all land described above.

Contract No. 821.

Issued June 17, 1880, to John McCann. For Lot 5 of Sec. 3, T. 1 N., R. 12 W., S. B. M. (Described in Exhibit "A," and also in Exhibit "B.". Within primary limits S. P. R. R. Branch-line grant.) 20.16 Acres. Agreed Pur. Price, $50.40. Pur. Price Paid, $50.40. Int. paid, $———. Deed issued June 18, 1880, to McCann. Patent No. 2. Issued Apl. 4, 1879, for all land described above.

Contract No. 1097.

Issued June 24, 1881, to F. J. Woodbury and J. P. Woodbury. For N. E. ¼ of Sec. 3, T. 1 N., R. 12 W., S. B. M. (Described in Exhibit "A," and also in Exhibit "B." Within primary limits S. P. R. R. Branch-line grant.) 40 Acres. Agreed Pur. Price, $100. Pur. Price Paid, $100. Int. paid, $———. Deed issued June 29, 1881, to Woodbury & Woodbury. Patent No. 2. Issued Apl. 4, 1879, for all lands described above.

Contract No. 961.

Issued Dec. 15, 1880, to Levi W. Giddings. For Lots 1, 8 and 9 of Sec. 5, T. 1 N., R. 12 W., S. B. M. (Described in Exhibit "A," and also in Exhibit "B." Within primary limits S. P. R. R. Branch-line grant.) 76.20 Acres. Agreed Pur. Price, $190.50. Pur. Price Paid, $190.50.

Int. paid, $10.67. Deed issued Jany. 7, 1882, to Giddings. Patent No. 2. Issued Apl. 4, 1879, for all land described above.

Contract No. 738.

Issued Sept. 20, 1879, to Levi W. Giddings. For Lot 2 of Sec. 5, T. 1 N., R. 12 W., S. B. M. (Described in Exhibit "A," and also in Exhibit "B." Within primary limits S. P. R. R. Branch-line grant.) 40 Acres. Agreed Pur. Price, $100. Pur. Price Paid, $100. Int. paid, $———. Deed issued Sept. 22, 1879, to Giddings. Patent No. 2. Issued Apl. 4, 1879, for all land described above.

Contract No. 740.

Issued Sep. 22, 1879, to Henry G. Monks. For Lots 3, 4, 5, 6 & 7 of Sec. 5, T. 1 N., R. 12 W., S. B. M. (Described in Exhibit "A," and also in Exhibit "B." Within primary limits S. P. R. R. Branch-line grant.) 148.28 Acres. Agreed Pur. Price, $370.70. Pur. Price Paid, $370.70. Int. paid $———. Deed issued Sep. 22, 1879, to Monks. Patent No. 2. Issued Apl. 4, 1879, for all land described above.

Contract No. 771.

Issued Dec. 1, 1879, to William Allen. For Lots 1 & 2 of Sec. 11, T. 1 N., R. 12 W., S. B. M. (Described in Exhibit "A," and also in Exhibit "B." Within primary limits S. P. R. R. Branch-line grant.) 36.65 Acres. Agreed Pur. Price, $91.63. Pur. Price Paid, $91.63. Int. paid, $———. Deed issued Dec. 1, 1879, to Allen. Patent No. 2. Issued Apl. 4, 1879, for all land described above.

Contract No. 736.

Issued Sep. 15, 1879, to Wm. Allen, Mary Agnes Crank, Albert Brigden and James Craig. For Lots 3, 4 & 5 of Sec. 11, T. 1 N., R. 12 W,, S. B. M. (Described in Exhibit "A," and also in Exhibit "B," Within primary limits S. P. R. R. Branch-line grant.) 95.10 Acres. Agreed Pur. Price, $237.75. Pur. Price Paid, $237.75. Int. paid $———. Deed issued Sept. 17, 1879, to Allen, Crank, Brigden & Craig. Patent No. 2. Issued Apl. 4, 1879, for all land described above.

Contract No. 717.

Issued June 27, 1879, to Job C. Davis. For Lot 4 of Sec. 13, T. 1 N., R. 12 W., S. B. M. (Described in Exhibit "A," and also in Exhibit "B." Within primary limits S. P. R. R. Branch-line grant.) 23.06 Acres. Agreed Pur. Price, $57.65. Pur. Price Paid, $57.65. Int. paid, $———. Deed issued June 27, 1879, to Davis. Patent No. 2. Issued Apl. 4, 1879, for all land described above.

Contract No. 778.

Issued Dec. 29, 1879, to Samuel Chapman, Jr. For Lots 1 & 2 of Sec. 13, T. 1 N., R. 12 W., S. B. M. (Described in Exhibit "A," and also in Exhibit "B." Within primary limits S. P. R. R. Branch-line grant.) 47.20 Acres. Agreed Pur. Price, $118. Pur. Price Paid, $118. Int. paid, $———. Deed issued Dec. 29, 1879, to Chapman. Patent No. 2. Issued Apl. 4, 1879, for all land described above.

Contract No. 737.

Issued Sept. 15, 1879, to Heinrich Martin Fischer. For Lots 1, 2 & 3 Sec. 3, T. 1 N., R. 14 W., S. B. M. (Described in Exhibit "A," but not in Exhibit "B." Within primary limits S. P. R. R. Branch-line grant.) 99.77 Acres. Agreed Pur. Price, $268.38. Pur. Price Paid, $268.38. Int. paid, $21.47. Deed issued Sept. 17, 1880, to Fischer. Patent No. 2. Issued Apl. 4, 1879, for all land described above.

Contract No. 2038.

Issued Jany. 7, 1882, to Henry Martz. For S. E. ¼ of N. W. ¼, S. W. ¼ of N. E. ¼ and N. E. ¼ of S. W. ¼ of Sec. 3, T. 1 N., R. 14 W., S. B. M. (Described in Exhibit "A," and also in Exhibit "B." Within primary limits S. P. R. R. Branch-line grant.) 120 Acres. Agreed Pur. Price, $340. Pur. Price Paid, $340. Int. paid, $48.82. Deed issued Aug. 2, 1884, to Martz. Patent No. 2. Issued Apl. 4, 1879, for all land described above.

Contract No. 1840.

Issued Dec. 16, 1881, to William Vawter. For S. W. ¼ of N. W. ¼ & Lots 4 & 5 of Sec. 3, T. 1 N., R. 14 W., S. B. M. (Described in Exhibit "A," and also in Exhibit "B." Within primary limits S. P. R. R. Branch-line grant.) 120 Acres. Agreed Pur. Price, $320. Pur. Price Paid, $320. Int. paid, $41.09. Deed issued Apl. 1, 1884, to E. W. Lewis. Patent No. 2. Issued Apl. 4, 1879, for all land described above.

Contract No. 1217.

Issued Sept. 20, 1881, to Edwin Smith. For S. E. ¼

(Described in Exhibit "A," and also in Exhibit "B." Within primary limits S. P. R. R. Branch-line grant.) 40 Acres. Agreed Pur. Price, $100. Pur. Price Paid, $100. Int. paid, $———. Deed issued Dec. 11, 1879, to Dexter. Patent No. 2. Issued Apl. 4, 1879, for all land described above.

Contract No. 1022.

Issued Mch. 8, 1891, to W. R. Wiggins. For S. E. ¼ of N. W. ¼ of Sec. 13, T. 1 N., R. 8 W., S. B. M, (Described in Exhibit "A," and also in Exhibit "B." Within primary limits S. P. R. R. Branch-line grant.) 40 Acres. Agreed Pur. Price, $100. Pur. Price Paid, $100. Int. paid, $———. Deed issued Mch. 17, 1881, to Wiggins. Patent No. 2. Issued Apl. 4, 1879, for all land described above.

Contract No. 1034.

Issued Mch. 31, 1881, to W. R. Wiggins. For S. W. ¼ of N. W. ¼ of Sec. 13, T. 1 N., R. 8 W., S. B. M. (Described in Exhibit "A," and also in Exhibit "B." Within primary limits S. P. R. R. Branch-line grant.) 40 Acres. Agreed Pur. Price, $100. Pur. Price Paid, $100. Int. paid, $———. Deed issued Mch. 24, 1881, to Wiggins. Patent No. 2. Issued Apl. 4, 1879, for all land described above.

Contract No. 2340.

Issued July 7, 1882, to M. L. Wicks. For N. W. ¼ of N. W. ¼ of Sec. 13, T. 1 N., R. 8 W., S. B. M. (Described in Exhibit "A," and also in Exhibit "B." Within primary limits S. P. R. R. Branch-line grant.) 40 Acres. Agreed Pur. Price, $100. Pur. Price Paid, $100. Int.

paid, $28.28. Deed issued Aug. 8, 1887, to Pomona Land & Water Co. Patent No. 2. Issued Apl. 4, 1879, for all land described above.

Contract No. 3861.

Issued Aug. 11, 1884, to Pomona Land & Water Co. For W. ½ of S. W. ¼ of Sec. 13, T. 1 N., R. 8 W., S. B. M. (Described in Exhibit "A," and also in Exhibit "B." Within primary limits S. P. R. R. Branch-line grant.) 80 Acres. Agreed Pur. Price, $200. Pur. Price Paid, $200. Int. paid, $———. Deed issued Aug. 12, 1884, to Pomona Land & Water Co. Patent No. 6. Issued Dec. 27, 1883, for all land described above.

Contract No. 2756.

Issued Apl. 25, 1883, to N. W. Stowell. For S. E. ¼ of Sec. 19, T. 1 N., R. 8 W., S. B. M. (Described in Exhibit "A,"and also in Exhibit "B." Within primary limits S. P. R. R. Branch-line grant.) 160 Acres. Agreed Pur. Price, $400. Pur. Price Paid, $400. Int. paid, $88.05. Deed issued Apl. 5, 1887, to L. L. Bradbury. Patent No. 1. Issued Mch. 29, 1876, for all land described above.

Contract No. 6133.

Issued Dec. 14, 1886, to J. L. Howland. For E. ½ of S. W. ¼ and S. E. ¼ of Sec. 21, T. 1. N., R. 8 W., S. B. M. (Described in Exhibit "A," but not in Exhibit "B." Within primary limits S. P. R. R. Branch-line grant.) 240 Acres. Agreed Pur. Price, $600. Pur. Price Paid, $120. Int. paid, $201.60. Present owner of contract,

Patent No. 2. Issued Apl. 4, 1879, for all land described above.

Contract No. 3613.

Issued May 26, 1884, to Clarence E. Richardson. For Lots 1, 2, 3, & 4 of Sec. 27, T. 1 N., R. 14 W., S. B. M. (Described in Exhibit "A," and also in Exhibit "B." Within primary limits S. P. R. R. Branch-line grant.) 78.49 Acres. Agreed Pur. Price, $196.23. Pur. Price Paid, $196.23. Int. paid, $10.99. Deed issued May 25, 1885, to Elijah H. Workman. Patent No. 6. Issued Dec. 27, 1883, for all land described above.

Contract No. 5059.

Issued Dec. 11, 1885, to Presentacion B. de Haley. For Fracl. S. W. ¼ of Sec. 31, T. 1 N., R. 14 W., S. B. M. (Described in Exhibit "A," but not in Exhibit "B." Within primary limits S. P. R. R. Branch-line grant.) 162.40 Acres. Agreed Pur. Price, $812. Pur. Price Paid, $812. Int. paid, $227.35. Deed issued Jan. 13, 1891, to A. Rosecrans. Patent No. 6. Issued Dec. 27, 1883, for all land described above.

Contract No. 5060.

Issued Dec. 11, 1885, to Presentacion B. de Haley. For Fracl. S. E. ¼ of Sec. 31, T. 1 N., R. 14 W., S. B. M. (Described in Exhibit "A," but not in Exhibit "B." Within primary limits S. P. R. R. Branch-line grant.) 154 Acres. Agreed Pur. Price, $462. Pur. Price Paid, $92.40. Int. paid, $129.35. Contract canceled May 26, 1896 by Decree in foreclosure of Sup. Ct. L. A. Co., dated Apl. 24, 1896. Patent No. 6. Issued Dec. 27, 1883, for all land described above.

Contract No. 3805.

Issued July 14, 1884, to B. Ballerino. For S. ½ of S. W. ¼ and Lots 1 & 2 of Sec. 33, T. 1 N., R. 14. W., S. B. M. (Described in Exhibit "A," but not in Exhibit "B." Within primary limits S. P. R. R. Branch-line grant.) 128.80 Acres. Agreed Pur. Price, $322. Pur. Price Paid, $322. Int. paid, $6319. Deed issued Jany. 31, 1888, to Ballerino. Patent No. 6. Issued Dec. 27, 1883, for all land described above.

Contract No. 11,344.

Issued July 9, 1894, to B. Ballerino. For S. ½ of S. E. ¼, and Lots 3 & 4 of Sec. 33, T. 1 N., R. 14 W., S. B. M. (Described in Exhibit "A," but not in Exhibit "B." Within primary limits S. P. R. R. Branch-line grant.) 120.40 Acres. Agreed Pur. Price, $481.60. Pur. Price Paid, $96.32. Int. paid, $26.97. Present owner of contract, Bellerino. Patent No. 6. Issued Dec. 27, 1883, for all land described above.

Contract No. 4453.

Issued Mch. 18, 1885, to M. Kelleher & M. L. Wicks. For E. ½ of Sec. 35, T. 1 N., R. 14 W., S. B. M. (Described in Exhibit "A," but not in Exhibit "B." Within primary limits S. P. R. R. Branch-line grant.) 320 Acres, Agreed Pur. Price, $800. Pur. Price Paid, $800. Int. paid, $245.77. Deed issued Sept. 18, 1890, to Mrs. Julia E. Lord. Patent No. 6. Issued Dec. 27, 1883, for all land described above.

Contract No. 3835.

Issued July 31, 1884, to S. A. Guiberson. For N. W. ¼ of Sec. 3, T. 3 N., R. 19 W., S. B. M. (Described in Exhibit "A," but not in Exhibit "B." Within primary limits S. P. R. R. Branch-line grant.) 160 Acres. Agreed Pur. Price, $280. Pur. Price Paid, $280. Int. paid, $100.97. Deed issued Oct. 19, 1891, to Guiberson. Patent No. 6. Issued Dec. 27, 1883, for all land described above.

Contract No. 4177.

Issued Jany. 5, 1885, to Alexander Phillips. For E. ½ of N. E. ¼ of Sec. 5, T. 3 N., R. 19 W., S. B. M. (Described in Exhibit "A," and also in Exhibit "B." Within primary limits S. P. R. R. Branch-line grant.) 79.95 Acres. Agreed Pur. Price, $239.85. Pur. Price Paid, $239.85. Int. paid, $———. Deed issued Jany. 7, 1885, to Phillips. Patent No. 6. Issued Dec. 27, 1883, for all land described above.

Contract No. 3834.

Issued July 31, 1884, to John Cawelti. For N. ½ of S. E. ¼, S. W. ¼ and N. ½ of Sec. 15, T. 4 N., R. 19 W., S. B. M. (Described in Exhibit "A," and also in Exhibit "B." Within primary limits S. P. R. R. Branch-line grant.) 560 Acres. Agreed Pur. Price, $1400. Pur. Price Paid, $1400. Int. paid, $392. Deed issued Aug. 19, 1889, to Cawelti. Patent No. 6. Issued Dec. 27, 1883, for all land described above.

Contract No. 3832.

Issued July 31, 1884, to J. A. Conaway. For S. ½ of

S. E. ¼ of Sec. 15, T. 4 N., R. 19 W., S. B. M. (Described in Exhibit "A," but not in Exhibit "B." Within primary limits S. P. R. R. Branch-line grant.) 80 Acres. Agreed Pur. Price, $200. Pur. Price Paid, $200. Int. paid, $75.00. Deed issued Aug. 10, 1891, to Conaway. Patent No. 6. Issued Dec. 27, 1883, for all land described above.

Contract No. 6247.

Issued Jany. 14, 1887, to Thomas F. Arundell. For E. ½ of N. E. ¼ and E. ½ of S. E. ¼ of Sec. 17, T. 4 N., R. 19 W., S. B. M. (Described in Exhibit "A," but not in Exhibit "B." Within primary limits S. P. R. R. Branch-line grant.) 160 Acres. Agreed Pur. Price, $400. Pur. Price Paid, $400. Int. paid, $136.15. Deed issued Aug. 10, 1893, to Arundell. Patent No. 6. Issued Dec. 27, 1883, for all land described above.

Contract No. 3852.

Issued Aug. 5, 1884, to Thomas Rhodes. For N. ½ and S. W. ¼ of Sec. 21, T. 4 N., R. 19 W., S. B. M. (Described in Exhibit "A," but not in Exhibit "B." Within primary limits S. P. R. R. Branch-line grant.) 480 Acres. Agreed Pur. Price, $960. ur. Price Paid, $960. Int. paid, $———. Deed issued Aug. 6, 1884, to Rhodes. Patent No. 6. Issued Dec. 27, 1883, for all land described above.

Contract No. 6953.

Issued Apl. 30, 1887, to N. A. M. Kellogg. For S. E. ¼ of Sec. 21, T. 4 N., R. 19 W., S. B. M. (Described in Exhibit "A," but not in Exhibit "B." Within primary limits S. P. R. R. Branch-line grant.) 160 Acres. Agreed

Pur. Price, $320. Pur. Price Paid, $320. Int. paid, $———. Deed issued June 21, 1887, to Kellogg. Patent No. 6. Issued Dec. 27, 1883, for all land described above.

Contract No. 3832.

Issued July 31, 1884, to J. A. Conaway. For N. W. ¼ of Sec. 23, T. 4 N., R. 19 W., S. B. M. (Described in Exhibit "A," but not in Exhibit "B." Within primary limits S. P. R. R. Branch-line grant.) 160 Acres. Agreed Pur. Price, $400. Pur. Price Paid, $400. Int. paid, $150. Deed issued Aug. 10, 1891, to Conaway. Patent No. 6. Issued Dec. 27, 1883, for all land described above.

Contract No. 3833.

Issued July 31, 1884, to C. C. Riley. For S. W. ¼ of Sec. 23, T. 4 N., R. 19 W., S. B. M. (Described in Exhibit "A," but not in Exhibit "B." Within primary limits S. P. R. R. Branch-line grant.) 160 Acres. Agreed Pur. Price, $400. Pur. Price Paid, $400. Int paid, $112. Deed issued July 30, 1889, to Riley. Patent No. 6. Issued Dec. 27, 1883, for all land described above.

Contract No. 10,243.

Issued Feb. 28, 1890, to Charles T. Meredith. For N. W. ¼ of N. W. ¼ of Sec. 25, T. 4 N., R. 19 W., S. B. M. (Described in Exhibit "A," but not in Exhibit "B." Within primary limits S. P. R. R. Branch-line grant.) 40 Acres. Agreed Pur. Price, $100. Pur. Price Paid, $100. Int. paid, $———. Deed issued Mch. 1, 1890, to Meredith. Deed of Master in Chancery, dated May 21, 1887, for all land described above.

Contract No. 9755.

Issued June 20, 1888, to J. C. Stone. For N. W. ¼ of S. E. ¼, E. ½ of S. W. ¼, and S. W. ¼ of S. W. ¼ of Sec. 25, T, 4 N., R. 19 W., S. B. M. (Described in Exhibit "A," but not in Exhibit "B." Within primary limits S. P. R. R. Branch-line grant.) 160 Acres. Agreed Pur. Price, $500. Pur. Price Paid, $500. Int. paid, $———. Deed issued July 16, 1888, to Stone. Deed of Master in Chancery, dated May 21, 1887, for all land described above.

Contract No. 9980.

Issued Nov. 28, 1888, to Pascual Real. For E. ½ of S. E. ¼ of Sec. 25, T. 4 N., R. 19 W., S. B. M. (Described in Exhibit "A," but not in Exhibit "B." Within primary limits S. P. R. R. Branch-line grant.) 80 Acres. Agreed Pur. Price, $400. Pur. Price Paid, $80. Int. paid, $112. Present owner of contract Pascual Real. Judgment against Pascual Real. Land patented to him adversely to Company. Judgment issued Dec. 11, 1885, for all land described above.

Contract No. 3991.

Issued Oct. 14, 1884, to J. A. Conaway. For N. E. ¼ of Sec. 27, T. 4 N., R. 19 W., S. B. M. (Described in Exhibit "A," but not in Exhibit "B." Within primary limits S. P. R. R. Branch-line grant.) 160 Acres. Agreed Pur. Price, $400. Pur. Price Paid, $400. Int. paid, $151.32. Deed issued Oct. 22, 1891, to Conaway. Patent No. 6. Issued Dec. 27, 1883, for all land described above.

Contract No. 10,605.

Issued Nov. 28, 1890, to Rush J. Ealy. For N. E. ¼ of N. W. ¼ & W. ½ of N. W. ¼ of Sec. 27, T. 4 N., R. 19 W., S, B. M. (Described in Exhibit "A," but not in Exhibit "B." Within primary limits S. P. R. R. Branch-line grant.) 120 Acres. Agreed Pur. Price, $300. Pur. Price Paid, $60. Int paid, $84. Present owner of contract, Rush J. Ealy. Patent No. 6. Issued Dec. 27, 1883, for all land described above.

Contract No. 3363.

Issued Mch. 24, 1884, to Rush J. Ealy, For S. E, ¼ of N. W. ¼ of Sec. 27, T. 4 N., R. 19 W., S. B. M. (Described in Exhibit "A," but not in Exhibit "B," Within primary limits S. P. R. R. Branch-line grant.) 40 Acres. Agreed Pur. Price, $100. Pur. Price Paid, $100. Int. paid, $———. Deed issued Mch. 25, 1884, to Ealy. Patent No. 6. Issued Dec. 27, 1883, for all land described above.

Contract No. 6300.

Issued Feb. 3, 1887, to N. A. M. Kellogg. For E. ½ of N. E. ¼ and N. E. ¼ of S. E. ¼ of Sec. 29, T. 4 N., R. 19 W., S. B. M. (Described in Exhibit "A," but not in Exhibit "B." Within primary limits S. P. R. R. Branch-line grant.) 120 Acres. Agreed Pur. Price, $300. Pur. Price Paid, $300. Int. paid, $3.85. Deed issued May 19, 1887, to Kellogg. Patent No. 6. Issued Dec. 27, 1883, for all land described above.

Contract No. 6275.

Issued Jany. 17, 1887, to S. A. Guiberson. For S. E. ¼ of N. E. ¼ of Sec. 33, T. 4 N., R. 19 W., S. B. M. (De-

scribed in Exhibit "A," but not in Exhibit "B." Within primary limits S. P. R. R. Branch-line grant.) 40 Acres. Agreed Pur. Price, $40. Pur. Price Paid, $40. Int. paid, $———. Deed issued Jany. 25, 1887, to Guiberson. Patent No. 6. Issued Dec. 27, 1883, for all land described above.

Contract No. 9180.

Issued Jany. 19, 1888, to Francis Bates. For Lots 2, 3 & 4 of Sec. 33, T. 4 N., R. 19 W., S. B. M. (Described in Exhibit "A," but not in Exhibit "B." Within primary limits S. P. R. R. Branch-line grant.) 112.81 Acres. Agreed Pur. Price, $282.03. Pur. Price Paid, $56.41. Int. paid, $173.69. This land is unpatented and money paid for interest and purchase price was refunded, Dec. 28, 1898, to Thos. R. Bard, assignee of Bates.

Contract No. 10,034.

Issued Feb. 18, 1889, to S. A. Guiberson. For E. ½ of S. E. ¼ of Sec. 33, T. 4 N., R. 19 W., S. B. M. (Described in Exhibit "A," but not in Exhibit "B." Within primary limits S. P. R. R. Branch-line grant.) 80 Acres. Agreed Pur. Price, $410. Pur. Price Paid, $410. Int. paid, $———. Deed issued Mch. 4, 1889, to Guiberson. Land patented to James Heaney, but by Decree Cir. Court, Feb. 8, 1887, land was awarded to Company.

Contract No. 3047.

Issued Jany. 14, 1884, to M. L. Wicks. For N. ½ of Sec. 7, T. 7 N., R. 13 W., S. B. M. (Described in Exhibit "A," but not in Exhibit "B." Within temporary 20-mile limits S. P. R. R. Main-line grant.) 318.20 Acres. Agreed Pur. Price, $795.50. Pur. Price Paid, $795.50.

Int. paid, $252.19. Deed issued Sept. 23, 1889, to Thomas Menzies. Patent No. 9. Issued Jany. 9, 1885, for all land described above.

Contract No. 3040.

Issued Jany. 14, 1884, to M. L. Wicks. For all fracl. Sec. 1, T. 7 N., R. 14 W., S. B. M. (Described in Exhibit "A," but not in Exhibit "B." Within indemnity limits S. P. R. R. Main-line grant.) 636.86 Acres, Agreed Pur. Price, $1,592.15. Pur. Price Paid, $1,592.15. Int. paid, $555.09. Deed issued Oct. 16, 1890, to Mary M. Hughes. Patent No. 9. Issued Jany. 9, 1885, for all land described above.

Contract No. 3041.

Issued Jany. 14, 1884, to M. L. Wicks. For all fracl. Sec. 3, T. 7 N., R. 14 W., S. B. M. (Described in Exhibit "A," but not in Exhibit "B." Within indemnity limits S. P. R. R. Main-line grant.) 631.20 Acres. Agreed Pur. Price, $1578. Pur. Price Paid, $1578. Int. paid, $530.32. Deed issued June 11, 1890, to Jennie L. Wicks. Patent No. 9. Issued Jany. 9, 1885, for all land described above.

Contract No. 3485.

Issued Apl. 30, 1884, to M. L. Wicks. For all fracl. Sec. 5, T. 7 N., R. 14 W., S. B. M. (Described in Exhibit "A," but not in Exhibit "B." Within indemnity limits S. P. R. R. Main-line grant.) 628.74 Acres. Agreed Pur. Price, $1,571.85, Pur. Price Paid, $1,571.85. Int. paid, $452.34. Deed issued July 16, 1889, to Fairmont Land & Water Co. Patent No. 9. Issued Jany. 9, 1885, for all land described above.

Contract No. 3486.

Issued Apl. 30, 1884, to M. L. Wicks. For N. ½ of Sec. 7, T. 7 N., R. 14 W., S. B. M. (Described in Exhibit "A," but not in Exhibit "B." Within indemnity limits S. P. R. R. Main-line grant.) 319.60 Acres. Agreed Pur. Price, $799. Pur. Price Paid, $799. Int paid, $230.43. Deed issued July 16, 1889, to Wicks. Patent No. 9. Issued Jany. 9, 1885, for all land described above.

Contract No. 3042.

Issued Jany. 14, 1884, to M. L. Wicks. For N. ½ of Sec. 9, T. 7 N., R. 14 W., S. B. M. (Described in Exhibit "A," but not in Exhibit "B." Within indemnity limits S. P. R. R. Main-line grant.) 320 Acres. Agreed Pur. Price, $800. Pur. Price Paid, $800. Int. paid, $224. Deed issued Jany. 19, 1889, to Mrs. C. L. True. Patent No. 9. Issued Jany. 9, 1885, for all land described above.

Contract No. 2888.

Issued Nov. 6, 1883, to W. R. Hughes. For N. ½ of Sec. 11, T. 7 N., R. 14 W., S. B. M. (Described in Exhibit "A," but not in Exhibit "B." Within indemnity limits S. P. R. R. Main-line grant.) 320 Acres. Agreed Pur. Price, $800. Pur. Price Paid, $800. Int. paid, $224. Deed issued Nov. 16, 1888, to Hughes. Patent No. 9. Issued Jany. 9, 1885, for all land described above.

Contract No. 3488.

Issued Apl. 30, 1884, to M. L. Wicks. For all of Sec. 1, T. 7 N., R. 15 W., S. B. M. (Described in Exhibit "A," but not in Exhibit "B." Within indemnity limits S. P.

R. R. Main-line grant.) 640 Acres. Agreed Pur. Price, $1600. Pur. Price Paid, $1600. Int. paid, $465.80. Deed issued July 16, 1889, to Fairmont Land & Water Co. Patent No. 9. Issued Jany. 9, 1885, for all land described above.

Contract No. 3489.

Issued Apl. 30, 1884, to M. L. Wicks. For N. ½ of Sec. 3, T. 7 N., R. 15 W. S. B. M. (Described in Exhibit "A," but not in Exhibit "B." Within indemnity limits S. P. R. R. Main-line grant.) 320 Acres. Agreed Pur. Price, $800. Pur. Price Paid, $800. Int. paid, $230.20. Deed issued July 16, 1889, to Fairmont Land & Water Co. Patent No. 9. Issued Jany. 9, 1885, for all land described above.

Contract No. 3881.

Issued Aug. 25, 1884, to Henry Hughes. For N. W. ¼ and Lot 2 of Sec. 5, T. 7 N., R. 15 W., S. B. M. (Described in Exhibit "A," but not in Exhibit "B." Within indemnity limits S. P. R. R. Main-line grant.) 240 Acres. Agreed Pur. Price, $840. Pur. Price Paid, $840. Int. Paid, $226.71. Deed issued July 16, 1889, to Fairmont Land & Water Co. E. ½ of N. W. ¼ and Lot 2 of N. E. ¼ in Patent No. 9. Issued Jany. 9, 1885, W. ½ of N. W. ¼ in Patent No. 10. Issued Jan. 9, 1885, for all land described above.

Contract No. ——.

Issued ————————, to ————————. For S. W. ¼ of S. W. ¼ of Sec. 31, T. 1 N., R. 8 W., S. B. M. (The defendants have no claim to this land.) (Not in Exhibit "A," but in Exhibit "B".) Agreed Pur. Price, $————.

Pur. Price Paid, $———. Int. paid, $———. Deed issued ————————, to ————————. Present Owner of Contract, ————————. Patent N.—— Issued————————, for —— Acres of land described above.

[Endorsed]: No. 878. U. S. Circuit Court, Ninth Circuit, Southern District of California. United States vs. Southern Pacific Railroad Co., et al. Answer. Service of copy admitted, on July 13th 1899. Joseph H. Call, Special Assistant U. S. Attorney. Filed July 14, 1899. Wm. M. Van Dyke, Clerk. Chas. N. Williams, Deputy. Wm. Singer, Jr., Rooms 61-2, Union Trust Building, San Francisco, Cal., Atty. for Defendants.

of Sec. 3, T. 1 N., R. 14 W., S. B. M. (Described in Exhibit "A," and also in Exhibit "B." Within primary limits S. P. R. R. Branch-line grant.) 160 Acres. Agreed Pur. Price, $400. Pur. Price Paid, $400. Int. paid $100.80. Deed issued Mch. 23, 1886. To Charles J. Fox. Patent No. 2. Issued Apl. 4, 1879, for all land described above.

Contract No. 1207.

Issued Sep. 16, 1881, to Andrew M. Smith. For W. ½ of S. W. ¼ and S. E. ¼ of S. W. ¼ of Sec. 3, T. 1 N., R. 14 W., S. B. M. (Described in Exhibit "A," and also in Exhibit B. Within primary limits S. P. R. R. Branch-line grant.) 120 Acres. Agreed Pur. Price, $300. Pur. Price Paid, $300. Int. paid, $71.45. Deed issued Sept. 27, 1886, to Smith. Patent No. 2. Issued Apl. 4, 1879, for all land described above.

Contract No. 4601.

Issued May 11, 1885. To M. L. Wicks. For Lots 1 & 2 of Sec. 5, T. 1 N., R. 14 W., S. B. M. (Described in Exhibit "A," but not in Exhibit "B." Within primary limits S. P. R. R. Branch-line grant.) 7.39 Acres. Agreed Pur. Price Paid, $22.17. Pur. Price Paid, $22.17. Int. paid, $2.48. Deed issued June 20, 1887, to J. Wallen Smith. Patent No. 2. Issued Apl. 4, 1879, for all land described above.

Contract No. 1275.

Issued Oct. 6, 1881, to Edwin Smith. For Fracl. N. ½ of Sec. 9, T. 1 N., R. 14 W., S. B. M. (Described in Exhibit in "A," and also in Exhibit "B." Within primary

limits S. P. R. R. Branch-line grant.) 282.22 Acres. Agreed Pur. Price, $939.43. Pur. Price Paid, $939. 43. Int. paid. $122. Deed issued Feb. 4, 1884, to Smith. Patent No. 2. Issued Apl. 4, 1879, for all land described above.

Contract No. 915.

Issued Oct. 29, 1880, to Edwin Smith. For Fracl. S. ½ of Sec. 9, T. 1 N., R. 14 W., S. B. M. (Described in Exhibit "A," and also in Exhibit "B." Within primary limits S. P. R. R. Branch-line grant.) 260.02 Acres. Agreed Pur. Price, $1,075.08. Pur. Price Paid, $1,075.08. Int. paid, $194.17. Deed issued Jany. 23, 1884 to Smith. Patent No. 2. Issued Apl. 4, 1879, for all land described above.

Contract No. 788.

Issued Mch. 11, 1880, to Simon White. For W. ½ of N. W. ¼ and Lots 1, 2, 3 & 4 of Sec. 11, T. 1 N., R. 14 W., S. B. M. (Described in Exhibit "A," and also in Exhibit "B." Within primary limits S. P. R. R. Branch-line grant.) 134.24 Acres. Agreed Pur. Price, $402.72. Pur. Price Paid, $402.72. Int. paid, $104.68. Deed issued Feb. 13, 1884, to White. Patent No. 2. Issued Apl. 4, 1879, for all land described above.

Contract No. 1011.

Issued Feb. 19, 1881, to Edwin Smith. For Lot 1 of Sec. 15, T. 1 N., R. 14 W., S. B. M. (Described in Exhibit "A," and also in Exhibit "B." Within primary limits S. P. R. R. Branch-line grant.) 2.92 Acres. Agreed Pur. Price, $12.41. Pur. Price Paid, $12.41. Int. paid, $———. Deed issued Feb. 24, 1881, to Smith

At a stated term, to wit, the January term, A. D. 1899, of the Circuit Court of the United States of America, of the Ninth Judicial Circuit, in and for the Southern District of California, held at the court-room in the city of Los Angeles, on Monday, the seventeenth day of July, in the year of our Lord, one thousand eight hundred and ninety-nine. Present: The Honorable ERSKINE M. ROSS, Circuit Judge.

THE UNITED STATES,
Plaintiff,
vs.
THE SOUTHERN PACIFIC RAILROAD COMPANY, and Others,
Defendants.
No. 878.

Order that Defendant Central Trust Co. Appear and Plead.

At a stated term of the Circuit Court of the United States for the Southern District of California, begun and holden at the City of Los Angeles, State of California, on the 9th day of January, A. D. 1899, the Honorable Erskine M. Ross, United States Circuit Judge, for the Ninth Judicial Circuit, presiding, on the 17th day of July, A. D., 1899, in open court, and Joseph H. Call, Special Assistant United States Attorney, having moved the Court for an order to require a certain defendant in the above entitled suit to appear, plead and answer within a time to be specified and hereinafter mentioned, and it appearing to the Court that said defendant in the above entitled suit, to wit: The Central

Trust Company of New York, is not an inhabitant of, nor can it be found within, this judicial district, the Southern District of California, nor within the state of California, and that it has not voluntarily appeared to this suit.

And it further appearing to the Court that this suit is one to enforce a claim to certain real estate described in the bill of complaint and within this judicial district.

And it further appearing that there is no person or persons in possession or charge of said real estate.

Now, therefore, it is ordered and adjudged that said The Central Trust Company of New York, be, and it is hereby directed to appear in this court in the city of Los Angeles, state of California, on or before the first Monday in September, A. D. 1899, and to plead, answer or demur to the bill of complaint in said suit on or before the first Monday of October, A. D. 1899.

And it is further ordered and adjudged that a copy of this order, duly certified by the clerk of this court, may be served upon said defendant last named, wherever it may be found.

I, Wm. M. Van Dyke, Clerk of the Circuit Court of the United States, for the Southern District of California, do hereby certify the foregoing to be a full, true and correct copy of an original order made and entered by said Court, July 17th, 1899, in the cause entitled The United States, Plaintiff, vs. The Southern Pacfic Railroad Company, and others, Defendants, No. 878, and remaining of record therein.

Attest my hand and the seal of said Circuit Court, this 17th day of July, A. D. 1899.

[Seal] WM. M. VAN DYKE,
Clerk.

I hereby certify, that on the 27th day of July, 1899, at the city of New York, in my District, I served the within certified copy of order upon the within-named, The Central Trust Company of New York, by exhibiting to F. L. Grant, as assistant secretary of said company the within certified copy of order and at the same time leaving with him a copy thereof.

WM. HENKEL,
United States Marshal, Southern District of New York.
Dated July 27, 1899.

[Endorsed]: No. 878. U. S. Circuit Court, Ninth Circuit, Southern District of California. The United States vs. The Southern Pacific Railroad Company, et al. Certified copy order. Filed Aug. 2, 1899. Wm. M. Van Dyke, Clerk.

In the United States Circuit Court, Southern District of California, Ninth Circuit.

UNITED STATES OF AMERICA,
Complainant,
vs.
SOUTHERN PACIFIC RAILROAD COMPANY and Others,
Defendants.
No. 878.

Replication of the United States to the Answer of Southern Pacific R. R. Co. et al., Defendants.

This replicant, saving and reserving to himself all and all manner of advantage of exception to the manifold insufficiencies of the said answer, for replication thereunto, saith that he will aver and prove his said bill to be true, certain and sufficient in the law to be answered unto; and that the said answer of the said defendant is uncertain, untrue and insufficient to be replied unto by this replicant without this, that any other matter of thing whatsoever in the said answer contained material or effectual in the law to be replied unto, confessed and avoided, traversed or denied, is true; all which matters and things this replicant is, and will be, ready to aver and prove as this honorable court shall direct, and humbly prays, as in and by his said bill he hath already prayed.

JOSEPH H. CALL,
Special Asst. U. S. Atty. and of Counsel for Complainant.

[Endorsed]: No. 878. In the U. S. Circuit Court, Southern Dist. of Cal. United States of America, Complainant, vs. Southern Pacific Railroad Co. et al., Defendants. Filed Aug. 2, 1899. Wm. M. Van Dyke, Clerk. Joseph H. Call, Special Asst. U. S. Atty.

At a stated term, to wit, the August Term, A. D. 1899, of the Circuit Court of the United States of America, of the Ninth Judicial Circuit, in and for the Southern District of California, held at the courtroom in the city of Los Angeles, on Monday, the eighteenth day of September, in the year of our Lord, one thousand eight hundred and ninety-nine. Present: The Honorable OLIN WELLBORN, District Judge.

THE UNITED STATES OF AMERICA, Complainants, vs. THE SOUTHERN PACIFIC RAILROAD COMPANY, et al., Defendants.	No. 878.

Order that Answer of Southern Pac. R. R. Co. et al. be Deemed Answer of Central Trust Co. of New York.

Pursuant to the stipulation of the parties to said cause by their attorneys on file herein, it is ordered that the answer of the defendants, Southern Pacific Railroad Company, and others, now on file in this court, and cause, to the plaintiffs' bill of complaint, herein, stand for, and be deemed the answer of the defendant, Central Trust Company of New York, as effectually, and in

all respect the same as if the said Central Trust Company of New York was named in the said answer as one of the defendants answering therein; and that the replication to the answer of said Southern Pacific Railroad Company shall stand as the replication to the answer of said Central Trust Company.

[Endorsed]: No. 878. U. S. Circuit Court Ninth Circuit, Southern District of California. The United States of America, vs. The Southern Pacific Railroad Company, et al. Copy Order that Answer of Southern Pacific Railroad Company be Deemed as Answer of Central Trust Company of New York. Filed Dec. 15, 1902. Wm. M. Van Dyke, Clerk. Chas. N. Williams, Deputy.

In the Circuit Court of the United States, Ninth Circuit, Southern District of California.

THE UNITED STATES,
Complainant,
vs.
THE SOUTHERN PACIFIC RAILROAD COMPANY, et al.,
Defendants.
No. 878.

Answer of San Francisco Savings Union et al.

Answer of San Francisco Savings Union (a Corporation), the Bank of America, (a Corporation), H. L. MacNeil, and W. D. Turner, to the bill of complaint in the above-entitled action.

These defendants respectively now, and at all times

hereafter, saving to themselves all and all manner of benefit of exception or otherwise that can or may be had or taken to the many errors, uncertainties and imperfections in the said bill contained, for answer thereto, or to so much thereof as these defendants are advised, it is material or necessary for them to make answer to, answering severally say:

I.

That the above-named parties, the San Francisco Savings Union (a corporation), the Bank of America (a corporation), H. L. MacNeil and W. D. Turner, are severally the owners and in the possession of certain lands affected by the above-entitled action, and hereinafter particularly described and that said parties last named, are not made parties to said action; but, that such lands are covered by and included in the answer filed herein by the Southern Pacific Railroad Company.

II.

That the above-named parties, the San Francisco Savings Union (a corporation) and the Bank of America (a corporation) are, and each of them is, a corporation duly organized and existing under the laws of the State of California.

III.

That the following described lands, to wit:

The north half of the northeast quarter (N. ½ of N. E. ¼), containing eighty (80) acres;

Also, the north half of the southeast quarter of the Northeast quarter (N. ½ of S. E. ¼ of N. E. ¼), containing twenty (20) acres;

Also, a strip of land described as commencing at a point in the northeast corner of the southwest quarter of the northeast quarter (S. W. ¼ of N. E. ¼), of section twenty-one (21), in township one (1) south, range seven (7) west, San Bernardino base and meridian, and running thence south along the quarter section line ten (10) chains to a point; thence west, and at right angles with said last named line, two chains and fifty links (2.50 ch.) to a point; thence north ten (10) chains to a point in the dividing line between the North and South halves of the northeast quarter (N. E. ¼) of said section 21, thence east two chains and fifty links (2.50 ch.) to the place of commencement, and containing two and fifty-hundredths (2.50) acres;

Also, the northeast quarter of the Northwest quarter (N. E. ¼ of the N. W. ¼), containing forty (40) acres;

Also, the east three-fourths of the northwest quarter of the northwest quarter (E. ¾ of N. W. ¼ of N. W. ¼), containing thirty (30) acres;

All of the foregoing described lands being situated in section twenty-one (21), township one (1) south, of range seven (7) west, San Bernardino base and meridian—together with other lands, were, by a patent of the United States, issued on the 4th day of April, 1879, granted to the Southern Pacific Railroad Company.

That thereafter, so much of said above-described lands as are situated in the north half of said section 21, were contracted to be sold and conveyed by the said Southern Pacific Railroad Company, under contract No. 2338, issued June 30th, 1882, to one M. L. Wicks, for the pur-

chase price of $1400, who thereafter paid said purchase price, together with accrued interest thereon amounting to $397.44, and on August 8th, 1887, a deed was duly executed, acknowledged and delivered by the said Southern Pacific Railroad Company to the Pomona Land and Water Company, as the assignee and successor in interest under said contract to said Wicks.

That so much of said lands above described, as are situated in the south half of said section 21, were contracted to be sold under contract No. 2319, issued May 18th, 1882, to one M. L. Wicks, for the purchase price of $1400 who thereafter paid said purchase price, with accrued interest thereon, amounting to $349.75, and thereafter a deed covering the said premises, was duly executed, acknowledged and delivered by said Southern Pacific Railrod Company, to the said Pomona Land and Water Company, as the assignee and successor in interest of said Wicks.

That under and by certain mesne conveyances in writing, duly executed, acknowledged and thereafter duly recorded in the office of the county recorder of the county of San Bernardino, State of California, the said premises were conveyed to, and became vested in, the said Bank of America, a corporation, who is now the owner and holder of legal title thereto, in fee simple absolute, and is now in the possession of same.

IV.

That the following described lands, to wit:

The east one-half of the northeast quarter of the southeast quarter, (E ½ of N. E. ¼ of S. E. ¼);

The northwest quarter of the southeast quarter (N. W. ¼ of S. E. ¼);

And the south one-half of the southeast quarter (S. ½ of S. E. ¼);

Of section twenty-seven (27) in township one (1) north of range five (5) west, San Bernardino base and meridian—were, by a patent dated December 27th, 1883, granted to the Southern Pacific Railroad Company, by the United States.

That thereafter said lands were by a contract in writing, No. 3553, and dated May 15th, 1884, contracted to be sold to one E. H. Morse, for the purchase price of $999.94, who thereafter paid said purchase price, together with accumulated interest thereon, amounting to $146.52, and on December 29th, 1886, a deed of conveyance was duly executed, acknowledged and delivered to said E. H. Morse, by said Southern Pacific Railroad Company conveying to, and vesting in, the said E. H. Morse, the title to the aforesaid premises.

That thereafter the said lands were conveyed through and by divers and sundry mesne conveyances, duly executed and delivered, and recorded in the office of said county recorder of San Bernardino County, for value, to, and since March 23, 1897, they have been vested in the said San Francisco Savings Union (a Corporation), in fee simple absolute, who is now the owner and holder of the legal title thereto, in fee simple absolute, and is now in the possession of same.

V.

That the following described lands, to wit:

The southwest quarter of the northeast quarter (S. W. ¼ of N. E. ¼), containing forty (40) acres; except, a strip of land described as commencing at a point in the northeast corner of the southwest quarter of the northeast quarter (S. W. ¼ of N. E. ¼) of section twenty-one (21), in township one (1) south of range seven (7) west, San Bernardino base and meridian, and running thence south along the quarter section line ten (10) chains to a point; thence west, and at right angles with said last named line, two chains and fifty links (2.50 ch.) to a point; thence north ten (10) chains to a point in the dividing line between the north and south halves of the northeast quarter (N. E. ¼) of said section twenty-one (21), thence east two chains and fifty links (2.50 ch.) to the place of commencement, and containing two and fifty-hundredths (2.50) acres;

The south half of the southeast quarter of the northeast quarter (S. ½ of S. E. ¼ of N. E. ¼) containing 20 acres;

The southeast quarter of the northwest quarter (S. E. ¼ of N. W. ¼) containing 40 acres;

The east three quarters of the southwest quarter of the northwest quarter (E. ¾ of S. W. ¼ of N. E. ¼) containing 30 acres;

The north half of the north half of the southeast quarter (N. ½ of N. ½ of S. E. ¼), containing 40 acres;

And the north half of the north half of the southwest quarter (N. ½ of N. ½ of S. W. ¼) containing 40 acres all

in section 21, township 1 south, range 7 west, S. B. M.—together with other lands, were by a patent of the United States issued on April 4th, 1879, granted to the said Southern Pacific Railroad Company.

That thereafter so much of said above-described lands as are situated in the north half of said section 21, were contracted to be sold and conveyed by said Southern Pacific Railroad Company under a contract in writing No. 2338 issued June 30th, 1882, to one M. L. Wicks, for the purchase price of $1400, who thereafter paid said purchase price, together with accrued interest thereon, amounting to $397.44 and on August 8th, 1887, a deed was duly executed, acknowledged and delivered by the said Southern Pacific Railroad Company to the Pomona Land and Water Company, as the assignee and successor in interest under said contract to said Wicks.

That so much of said lands above described, as are situated in the south half of said section 21, were contracted to be sold under Contract 2319, issued May 18th, 1882, to one M. L. Wicks, for the purchase price of $1400 who thereafter paid said purchase price, with accrued interest thereon, amounting to $349.75, and thereafter a deed covering the said premises, was duly executed, acknowledged and delivered by said Railroad Company to the Pomona Land and Water Company, as the assignee and successor in interest of said Wicks.

That under and by certain mesne conveyances in writing, duly executed, acknowledged, thereafter duly recorded in the said office of said county recorder, the said premises were conveyed to and became vested in the

said H. L. Macneil, who is now the owner and holder of the legal title thereto, in fee simple absolute, and is now in the possession of same.

VI.

That the following described land, to wit:

That portion of Government lot three (3) in the southwest quarter of section thirty-five (35) in township one (1) north of range seven (7) west, San Bernardino base and meridian, lying east of lot four (4) in block four (4) of Cucamonga Homestead Association, more fully described as follows:

Beginning at a point north 1 deg. .03 minutes west, 20.54 chains from the intersection of the San Bernardino base line, with the east line of the Cucamonga Grant; said point of intersection being also the southwest corner of the southeast quarter of section thirty-five (35) in township 1 north, range 7 west, S. B. M.; thence north 1 deg. .03 minutes west, 10.04 chains; thence east .55 of a chain; thence south 10.03 chains; thence west .37 of a chain to the place of beginning; estimated to contain 0.46 of an acre, were, together with other lands, by a patent dated and issued December 27th, 1883, granted to the Southern Pacific Railroad Company by the United States.

That thereafter said lands, together with other lands were by a contract in writing No. 3557, dated May 15th, 1884, contracted to be sold to one A. O. Porter, for the purchase price of $1,658.80, who thereafter paid said purchase price, and on May 16th, 1884, a deed of con-

veyance was duly executed, acknowledged and delivered to said A. O. Porter by said Southern Pacific Railroad Company, conveying to and vesting in the said A. O. Porter, the title to the aforesaid premises.

That under and by certain mesne conveyances in writing duly executed, acknowledged and thereafter duly recorded in the said office of said county recorder, the said premises were conveyed to and became vested in the said W. D. Turner, who is now the owner and holder of the legal title thereto, in fee simple absolute, and is now in the possession of same.

VII.

Said defendants further aver and say, that each of the sales hereinbefore set forth and described in paragraphs III, IV, V and VI hereof, by the said Southern Pacific Railroad Company, and by each of its grantees and successors in interest, through and by said mesne conveyances, down to and including the sale to each of these defendants, was made to a bona fide purchaser, citizen of the United States, who purchased the same, in each instance, in good faith, and for the full value of the said several tracts of land at the time of purchase, without any notice or knowledge, that the said United States had, or claimed to have, any right, title or interest whatsoever in or to the lands purchased, or any part thereof;

And that each of said purchasers, including these defendants, severally believed sincerely, and in good faith, that in making such purchase, he was acquiring a true title to the lands so purchased;

And these defendants do further aver that they are, and each of them is, advised and believe, that they are, and each of them is, a bona fide purchaser of said several tracts of land within the meaning of the acts of Congress in that behalf, cited in the complainant's bill of complaint; and they further aver that they have severally made application to the United States land office, for a confirmation of title to their said several tracts of land under the act of March 2nd, 1896, but that the acting commissioner of the said United States land office has declined to take any action under said or either of said applications during the pendency of this suit, and has referred these defendants severally to their remedy by answer in this action where it is suggested that said defendants can obtain a judicial determination as to right and title to said several tracts of land.

Wherefore, said defendants pray judgment severally in behalf of each, that the plaintiff may take nothing in this action by its bill of complaint herein either as against these defendants or as against their said lands.

That this court by its decree adjudicate and declare that these defendants are severally the owners of, and in the possession of, and vested with the title in fee simple absolute, to their said several tracts of land, free and clear of any claims thereto that the same is in anywise public land of the United States;

And that this Court by its decree herein further adjudicate that each of said above-named defendants is a bona fide purchaser of the said tract of land so purchased and acquired by him, and his predecessors in in-

terest, and confirm in each of said defendants the right and title to said several tracts of land in fee simple absolute, and that defendants may recover severally their costs of this proceeding.

R. H. F. VARIEL,
Solicitor for said Defendant.

United States of America, Ninth Circuit,
Southern District of California. } ss.

On this 27th day of September, A. D. 1899, before me, personally appeared R. H. F. Variel, the solicitor for the above-named defendants, who made solemn oath that he has read the foregoing answer subscribed by him as such, in behalf of said defendants, and that he knows the contents thereof, and the same is true of his own knowledge, except as to the matters therein stated on information and belief, and that as to those matters he believes it to be true.

That he further says, he makes this verification in behalf of said defendants because the facts therein set forth, as the result of his investigation into the title, and the record of the title to the said several tracts of land renders him better informed as to the condition of said title than are the said several defendants, and that otherwise, the said answer would be required to be verified by each of said defendants.

R. H. F. VARIEL,

Subscribed and sworn to before me, this 27th day of September, 1899.

[Seal] W. J. VARIEL,

Notary Public in and for the County of Los Angeles, State of California.

[U. S. Int. Rev. Stamp, 10 cts. cancelled.]

It is stipulated in the above-entitled cause that the foregoing answer may be filed by the defendants named therein and shall be deemed to be replied unto by complainant.

Sept. 27, 1899.

JOSEPH H. CALL,
Spl. U. S. Attorney.
R. H. F. VARIEL,
Counsel for said Defendants.

[Endorsed]: Original. No. 878. In the Circuit Court of the United States, Ninth Circuit, Southern Dstrict of California. The United States, Plaintiff, vs. The Southern Pacific Railroad Co., Defendant. Answer of Defendants Bank of America, San Francisco Savings Union, H. L. Macneil and W. D. Turner. Received copy of the within answer this 27th day of Sept., 1899. Joseph H. Call, Attorney for Plff. Filed Sep. 28, 1899. Wm. M. Van Dyke, Clerk. Chas N. Williams, Deputy. R. H. F. Variel, Abstract Building, Rooms 8, 9, 10, 11, Los Angeles, Cal., Solicitor for Defts.

In the Circuit Court of the United States, Ninth Circuit, Southern District of California.

THE UNITED STATES,
Complainant,
vs.
THE SOUTHERN PACIFIC COMPANY, et al.,
Defendants.
No. 878.

Answer of Mary J. Mackay.

Answer of Mary J. Mackay to the bill of complaint in the above-entitled action, by leave of court, and consent of parties.

The defendant, Mary J. Mackay, now and at all times hereafter, saving to herself all and all manner of benefit of exception or otherwise that can or may be had or taken to the many errors, uncertainties and imperfections in the said bill contained, for answer thereto, or to so much thereof as this defendants is advised it is material or necessary for her to make answer to, answering says:

I.

That the said Mary J. Mackay—femme sole—is a citizen of the United States, residing within said Ninth Circuit, Southern District of California, and is the owner and in possession of the certain lands hereinafter described, affected by the above-entitled action; and that she is not made a party to said action, but that such lands so occupied and owned by her are covered by and

included in the bill of complaint of the United States, and in the answer filed therein by the Southern Pacific Railroad Company, defendant.

II.

That by an act of the Congress of the United States, approved July 27, 1866, there was granted to the Atlantic and Pacific Railroad Company, among other things, every alternate section of public lands, not mineral, designated by odd numbers, to the amount of twenty alternate sections per mile on each side of the railroad line, as said Company might adopt, through the Territories of the United States, and ten alternate sections of land per mile on each side of the railroad, whenever it passes through any State, and whenever, on the line thereof, the United States had full title, not reserved, sold, granted or otherwise appropriated, and free from pre-emption or other claims or rights at the time the line of said road was designated; and that whenever, prior to said time, any of the sections, or part of sections, shall have been granted, sold, reserved, occupied by homestead settlers or pre-empted, or otherwise disposed of, other lands might be selected by said Company in lieu thereof, under the direction of the Secretary of the Interior, in alternate sections, and designated by odd numbers, not more than ten miles beyond the limits of said alternate sections, and not including the reserved numbers.

And it was by the same act provided, that the Southern Pacific Railroad Company, a company incorporated under the laws of the State of California, was thereby authorized to connect with the said Atlantic and Pacific

Railroad, formed under said Act, at such point near the boundary line of the State of California as they should deem most suitable for a railroad line to San Francisco, and should have a uniform gauge and rate of freight or fare with said road; and that in consideration thereof, and to aid in its construction, should have similar grants of land, subject to all the conditions and limitations therein provided, and should be required to construct its road on the like regulations as to time and manner with the Atlantic and Pacific Railroad therein provided for.

And that it was by the act of Congress, approved on the 3d day of March, 1871, duly enacted that for the purpose of connecting the Texas and Pacific Railroad with the city of San Francisco, the Southern Pacific Railroad Company of California was authorized to construct a line or railroad from a point at or near the Tehachapi Pass, by way of Los Angeles, to the Texas and Pacific railroad, at or near the Colorado River, with the same rights, grants and privileges, and subject to the same limitations, restrictions and conditions as were granted to the said Southern Pacific Railroad Company of California by the aforesaid act of July 27, 1866; and that in or about the year 1875, maps and plats of the definite location of the section of the said Southern Pacific Railroad were filed as required by law, which showed that the lands hereinafter described were embraced within the twenty-mile and primary limits of the said railroad grant to the said Southern Pacific Railroad Company.

III.

That in pursuance of the said act of Congress, the said

Southern Pacific Railroad Company did definitely locate its line, and that all of the lands hereinafter described were located within the limits of the said grant to the said Southern Pacific Railroad Company.

IV.

Said Mary J. Mackay, defendant, further shows, that, under and in pursuance of the said act, the Southern Pacific Railroad Company made claim to the United States Land Department for certain lands, and that on April 4, 1879, the United States granted to the said Southern Pacific Railroad Company, by its patent dated and issued April 4, 1879, the certain lands described as follows, to wit: Lot four (4) of section thirteen (13), township one (1) north, Range twelve (12) west, S. B. M., containing 23.06 acres, situate and being in the county of Los Angeles, State of California.

V.

This defendant further alleges that said lot four (4) of section thirteen (13), township one (1) north, range twelve (12) west, S. B. M., containing 23.06 acres, situate and being in the county of Los Angeles, State of California—was purchased from the Southern Pacific Railroad Company on June 27, 1879, by one Job C. Davis, under and by virtue of a certain contract in writing from said Railroad Company, No. 717, at and for the agreed purchase price of $57.65, which said sum was then the full, true and actual value thereof.

That thereafter and prior to the execution and delivery to him of its deed of conveyance therefor, the said Job C. Davis paid to said railroad company the full amount

of said agreed purchase price therefor, and said railroad company received from said Job C. Davis the said purchase price in full; and thereafter, to wit: on June 27, 1879, said railroad company issued, executed and delivered to said Job C. Davis its deed of conveyance of said last above-described tract of land, which said deed was duly acknowledged so as to entitle the same to be recorded, and was afterwards, to wit, on the first day of July recorded in the office of the country recorder of the county of Los Angeles, State of California, in book 67, page 629, of Deeds.

VI.

This defendant further alleges and shows that she has by mesne conveyances hereinafter stated, duly made, executed and delivered by said Job C. Davis and his grantees, in good faith and for and in consideration of full actual value paid, acquired the ownership and title in and to all that part and portion of said lot four (4), of section thirteen (13), township one (1) north, range twelve (12) west, S. B. M., described as follows, to wit:

Beginning at the southeast corner of said lot four (4), thence north along the east line thereof 402½ feet, thence south 84° 30′ west 195.2 feet, thence south 5½° east 402½ feet to the south line of said lot four (4), thence north 84° 30′ east along said last mentioned line 154 feet to the place of beginning.

The above description equals all of lot 109, the easterly 54 feet of lot 110, and a strip of land 16½ feet wide immediately adjoining said property on the south; all in the Vosburg Tract, according to map thereof recorded in book 14, pages 85 and 86 of Miscellaneous Records in the

office of the county recorder of Los Angeles County, California.

1st. Job C. Davis and his wife, Catherine A. Davis, to John T. Givens, by deed dated October 14, 1879, recorded October 15, 1879, in book 69, page 524, of Record of Deeds in the office of the county recorder, Los Angeles County, State of California.

2d. John T. Givens to James Foord, by deed dated October 1, 1880, recorded November 4, 1880, in book 76, page 207, of Deed Records in said office.

3d. James Foord to John S. Vosburg by deed dated October 15, 1881, recorded on same day in book 81, page 619, of Deed Records in said office.

Each of the foregoing deeds covering and conveying all of said lot four (4).

4th. John S. Vosburg to James O. Vosburg, by deed dated March 4, 1887, recorded March 7, 1887, in book 204, page 201, of Deed Records of said office covering and conveying the undivided one-half of said lot.

5th. John S. Vosburg and his wife, and James O. Vosburg and his wife to Ida Taylor Cohrs, by deed dated January 20, 1894, recorded January 24, 1894, in book 922, page 59 of Deed Records of said office, covering and conveying all that part and portion of said lot four (4), described in paragraph VI of this complaint.

6th. Ida Taylor Cohrs to John B. Cohrs by deed dated February 27, 1896, recorded July 22, 1897, in book 1176, page 170 of Deed Records of said office, covering and conveying the same property described in deed last above referred to.

7th. John B. Cohrs to Ida Taylor Cohrs by deed dated June 1, 1898, recorded June 4, 1898, in book 1240, page 40, of Deed Records in said office, covering and conveying same property described in deed last above stated.

8th. Ida Taylor Cohrs to Mary J. Mackay by deed dated June 13, 1899, recorded August 2, 1899, in book 1302, page 318 of Deed Records of said office, covering and conveying same property described in last above-stated deed, and in paragraph VI of this complaint.

VII.

This defendant Mary J. Mackay, further alleges and shows that she has acquired ownership and title to said land last above described by mesne conveyances from said Job C. Davis, subsequent to his purchase thereof from said Southern Pacific Railroad Company, and is now the bona fide purchaser and owner thereof and in possession of the same, under and by virtue of the said conveyances, and in consideration of the actual payment of the full agreed purchase price therefor.

VIII.

The defendant, Mary J. Mackay, further alleges and shows that in the purchase of said lands from the said Southern Pacific Railroad Company, the said Job C. Davis, this defendant and said other persons through whom she acquired her title to said lands from said Job C. Davis, as aforesaid, were each and all, at the times thereof, citizens of the United States and purchased the said land in good faith, believing that the patent issued by the United States Government vested in the said

Southern Pacific Railroad Company the fee simple title to said lands, and that said purchasers paid therefor the full value thereof, in each and every transfer thereof, hereinabove set forth; and without any notice or knowledge, that the United States had or claimed to have, any right, title or interest whatsoever in or to the lands so purchased by them or any part thereof, and that each of said purchasers, including this defendant, severally believed, sincerely and in good faith, that in making such purchase he was acquiring a true title to the land so purchased; and this defendant alleges that she is, and they and each of them was, a bona fide purchaser of said tracts of land, so purchased by them respectively within the meaning of the acts of Congress in that behalf, cited herein and in the complainant's bill of complaint; and this defendant further avers that she has made application to the United States land office, for the confirmation of title to her said tract of land under the act of March 2d, 1896, but that the Acting Commissioner of the said United States land office has declined to take any action under said or either of said applications during the pendency of this suit, and has referred this defendant to her remedy by answer in this action where it is suggested that said defendant can obtain a judicial determination as to right and title to said tract of land

IX.

This defendant Mary J. Mackay further alleges and shows that the Congress of the United States passed an act which was approved by the President of the United States on March 2, 1896, whereby it was, among other

things, provided that no patent to any lands held by a bona fide purchaser should be vacated or annulled; but that the right and title of such purchaser should be and was thereby confirmed. And by section two of the said act of Congress, approved March 2, 1896, and above referred to, it was provided as follows:

"Sec. 2. That if any person claiming to be a bona fide purchaser of any lands erroneously patented or certified shall present his claim to the Secretary of the Interior prior to the institution of a suit to cancel a patent or certification, and if it shall appear that he is a bona fide purchaser, the Secretary of the Interior shall request that suit be brought in such case against the patentee or the corporation, company, person or association of persons, for whose benefit the certification was made, for the value of said land, which in no case shall be more than the minimum Government price thereof, and the title of such claimant shall stand confirmed. An adverse decision by the Secretary of the Interior on the bona fides of such claimant shall not be conclusive of his rights, and if such claimant, or any one claiming to be a bona fide purchaser, but who has not submitted his claim to the Secretary of the Interior, is made a party to such suit, and if found by the Court to be a bona fide purchaser, the Court shall decree a confirmation of the title, and shall render a decree in behalf of the United States against the patentee, corporation, company, person or association of persons for whose benefit the certification was made for the value of the land as hereinbefore provided. Any bona fide purchaser of lands patented or certified to a railroad

company, and who is not made a party to such suit, and who has not submitted his claim to the Secretary of the Interior, may establish his right as such bona fide purchaser in any United States Court having jurisdiction of the subject matter or at his option, as prescribed in sections three and four of chapter three hundred and seventy-six of the acts of the second session of the forty-ninth Congress."

X.

This defendant further alleges that she has not presented her claim to the Secretary of the Interior for the confirmation of her title to the said lands, nor has any suit been instituted against said Job C. Davis, this defendant, or said other persons through whom this defendant acquired title from said Job C. Davis by the United States, for the determination of the said claim or affecting the said lands, nor has her said claim to the said lands ever been submitted to the Secretary of the Interior.

Wherefore, this defendant prays that her title to said lands, to wit: all that part and portion of lot four (4) of section thirteen (13), township one (1) north, range twelve (12) west, S. B. M., containing 23.06 acres, situate and being in the county of Los Angeles, State of California, described in paragraph VI of this complaint—be established and confirmed in her; and that it be decreed that the said deed of the said Southern Pacific Railroad Company to said Job C. Davis did, by the force and operation of the acts of Congress aforesaid, vest a title in fee simple in said Job C. Davis, in and to all of said lot four (4), and that your petitioner has asquired by

mesne conveyances from said Job C. Davis all of the said right and title in and to all that part and portion of said lot four (4), described in said paragraph VI, and that such title, so acquired, be confirmed and quieted as good and valid in this defendant Mary J. Mackay, free and clear of any claim thereto that the same is in anywise public land of the United States; and for such other and further decree as may be just and right in the premises, and for her cost herein.

S. V. LANDT,
Solicitor for Defendant, Mary J. Mackay.

State of California,
County of Los Angeles. }

Mary J. Mackay, being duly sworn, deposes and says that she is the defendant in the above-entitled matter; that she has read the foregoing answer and knows the contents thereof, that the same is true of her own knowledge, except as to the matters which are therein stated on her information or belief, and as to those matters that she believes it to be true.

MARY J. MACKAY,

Subscribed and sworn to before me this 9th day of October, 1899.

[Seal] HENRY HART,
Notary Public in and for the County of Los Angeles, State of California.

It is stipulated in the above-entitled cause that the foregoing answer may be filed by Mary J. Mackay, the de-

fendant named therein and that it be deemed to be replied unto by the Complainant.

October 11, 1899.

JOSEPH H. CALL,
Spl. U. S. Atty.

[Endorsed]: (Original.) No. 878. In the Circuit Court of the United States, Ninth Circuit, Southern District of California. The United States, Plaintiff, vs. The Southern Pacific Railroad Co., Defendant. Answer of Defendant Mary J. Mackay. Received copy of the within answer this 11th day of October, 1899. Joseph H. Call, Spl. U. S. Atty. Filed Oct. 12, 1899. Wm. M. Van Dyke, Clerk. S. V. Landt, Solicitor for Defendant.

In the Circuit Court of the United States, Ninth Circuit, in and for the Southern District of California.

UNITED STATES OF AMERICA, Complainant, vs. SOUTHERN PACIFIC RAILROAD COMPANY, et al., Defendants.	)	No. 878.

Answer of George C. Hagar.

George C. Hagar, having been made a party defendant in the above-entitled action, now makes answer to the bill of complaint of the United States, complainant.

This defendant now, and at all times, hereinafter, saving to himself all and all manner of benefit and advantage of exception or otherwise that can be had or

taken to the many errors, uncertainties and imperfections in the said bill of complaint, for answer thereto, or to so much thereof as this defendant is advised is material or necessary to make answer to, avers:

I.

That the lands hereinafter described were, as this defendant is advised and believes, and on such advice and belief avers, included in the grant made by the Congress of the United States, to the Southern Pacific Railroad Company, by act of March 3d, 1871, and are within the overlapping limits of the Atlantic & Pacific Railroad Company's grant, made by act of July 27th, 1866, and the said section of land is one of the numbered sections prescribed in said grant to said Southern Pacific Railroad Company.

That a patent to said lands was issued by the government of the United States to the Southern Pacific Railroad Company, by virtue of the aforesaid grant, which patent is dated April 4th, 1879, and recorded in the office of the county recorder of San Bernardino County, California in Book "A" of Patents, page 412. That the said lands herein described, together with other adjoining lands were, subsequent to the patent thereof to the said Southern Pacific Railroad Company, conveyed by said Southern Pacific Railroad Company to the Pomona Land and Water Company by deed dated November 18th, 1886, recorded in the office of said county recorder in volume 51 of Deeds at page 61.

That the said lands were so sold to the Pomona

Land and Water Company, by said Southern Pacific Railroad Company, as a part of its said grant, and that the said Pomona Land & Water Company was, and is a corporation organized and existing under the laws of the State of California, and a citizen of the United States, and that said corporation purchased said lands from the said Southern Pacific Railroad Company in good faith, believing that the said Southern Pacific Railroad Company had by virtue of its said grant, the right to sell said lands.

That the amount paid by said corporation to the Southern Pacific Railroad Company for said lands exceeded the sum of $4.20 per acre for each acre thereof. That at the time said lands were so sold by said Southern Pacific Railroad Company to said corporation, the Pomona Land & Water Company, no part thereof was in the bona fide occupation of any adverse claimant under the pre-emption or homestead laws of the United States, and no part thereof had been settled upon at the date of said purchase by any person claiming to enter the same under the settlement laws of the United States.

That thereafter, the said Pomona Land & Water Company conveyed said lands to one J. E. Plater, by deed dated May 5th, 1888, and recorded in the office of the County Recorder of San Bernardino County in volume 76 of Deeds at page 212.

That thereafter the said J. E. Plater, conveyed the said lands to the Ontario Land & Improvement Company, a corporation, by deed dated May 28th, 1888, and

recorded in the office of said County Recorder, in volume 76 of Deeds at page 194.

That the said lands so acquired by the Ontario Land & Improvement Company, together with other adjoining lands, were subsequently subdivided into lots and known as and called the Ontario Colony lands, for the purpose of sale, and in accordance with and as delineated on a map filed and recorded in book 11, of Maps, at page 6, in the office of said County Recorder of San Bernardino County.

That after the subdivision of said lands hereinafter described, this defendant, in good faith and for a valuable consideration, and believing that the defendant, Southern Pacific Railroad Company and its grantees, then owned by absolute title in fee simple, and had full right to sell and convey the lands hereinafter described, bargained for, purchased, paid for and received the deed of conveyance from said corporation, Ontario Land & Improvement Company to part of the said lands hereinafter described by lots, with reference to said map showing said subdivision, said deed being dated Jan. 24th, 1891, and recorded in the office of said County Recorder in volume 124 of Deeds, page 240. That the remainder of said lands hereinafter described, consisting of a strip along the southerly line thereof, was conveyed by the said Ontario Land & Improvement Company unto this defendant by deed dated August 17th, 1896, and recorded in the office of said County Recorder in volume 240 of Deeds at page 53. That the said lots so conveyed to this defendant by reference to the afore-

said map, together with the last mentioned strip of land are identical with and are the same lands described by governmental subdivision, as follows, to wit:

Situate in the south half of section 21, township one (1) south, range 7 west, San Bernardino base and meridian, and being the south one-half (½) of the southeast one-quarter (¼) of said section 21, containing 80 acres;

South one-half (½) of the north one-half (½) of the southeast one-quarter (¼) of said section 21, containing 40 acres;

The south one-half (½) of the southwest one-quarter (¼) of said section 21, containing 80 acres;

The south one-half (½) of the north one-half (½) of the southwest one-quarter (¼) of said section 21, containing 40 acres, together with all the privileges and appurtenances thereunto appertaining or belonging.

II.

That this defendant is a citizen of the United States, and is advised and believes, and on such advice and belief, avers, that he was and is a bona fide purchaser of said lands within the meaning of the acts of Congress in that behalf, cited in complainant's bill of complaint. That neither this defendant nor any of his predecessors in interest in said lands, had any notice or knowledge of any defects in the title of said railroad company, to the said lands; that this defendant subsequently to the commencement of this action made an application to the Honorable Secretary of the Interior, to have his title to the said lands confirmed, but said lands having been included in and affected by this action, no action

was taken toward confirming said title in this defendant.

All of which matters and things this defendant is ready and willing to aver, maintain and prove as this Honorable Court shall direct:

And he humbly prays a decree of this Court confirming title in him, to said lands hereinbefore described, and for his costs of suit herein incurred, and for such other, further and general relief in the premises as to equity and justice may appertain.

BORDEN & CARHART,
Attorneys for Defendant.

State of California,
County of Los Angeles. } ss.

George C. Hagar, being duly sworn, deposes and says, that he is the person named as a defendant in the above-entitled action; that he has read the foregoing answer and knows the contents thereof; that the same is true except as to those matters and things which are therein stated on information and belief, and as to those matters that he believes it to be true.

GEO. C. HAGAR.

Subscribed and sworn to before me this 15th day of Nov. 1899.

[Seal] F. A. STEPHENSON,
Notary Public in and for the County of Los Angeles, State of California.

It is stipulated that the foregoing answer may be filed by said defendant with the same effect as if originally

a party in said cause and that said answer shall be deemed to be replied unto Nov. 15 1899,

JOSEPH H. CALL,
Spl. U. S. Atty.
BORDEN & CARHART,
Attys. for Deft. Hagar.

[Endorsed]: Original. No. 878. In the Circuit Court of the United States, Ninth Circuit, in and for the Southern District of California. United States, Complainant, vs. Southern Pacific Ry. Co. et al., Defendants. Answer. Received copy of the within answer this 15th day of November, 1899. Joseph H. Call, Attorney for Complainant. Filed Nov. 15, 1899. Wm. M. Van Dyke, Clerk. Borden & Carhart, Rooms 426 to 431, Stimson Block, Los Angeles, California, Attorneys for Deft. Hagar.

At a stated term, to wit, the January term, A. D. 1900, of the Circuit Court of the United States of America, of the Ninth Judicial Circuit, in and for the Southern District of California, held at the court-room in the city of Los Angeles on Monday, the twenty-ninth day of January, in the year of our Lord, one thousand nine hundred. Present: The Honorable OLIN WELLBORN, District Judge.

UNITED STATES OF AMERICA,
Complainant,
vs.
SOUTHERN PACIFIC RAILROAD COMPANY et al.,
Defendants.
No. 878.

Order Allowing Mary Phillips to Become Party to Suit and File Answer.

Pursuant to the stipulation signed by the attorneys for complainant, and attorneys for defendant, Southern Pacific Railroad Company, and on motion of J. L. Murphey, Esq., of counsel for Mary Phillips, it is ordered that Mary Phillips be, and she hereby is allowed to become a party herein, and to file her answer to complainants' bill herein.

[Endorsed]: No. 878. U. S. Circuit Court, Ninth Circuit, Southern District of California. United States of America vs. Southern Pacific Railroad Company et al. Copy Order Allowing Mary Phillips to Become Party and to File Answer. Filed Dec. 15, 1902. Wm. M. Van Dyke, Clerk. Chas. N. Williams, Deputy.

In the Circuit Court of the United States, Ninth Circuit, Southern District of California.

THE UNITED STATES,
Complainant,
vs.
THE SOUTHERN PACIFIC RAILROAD COMPANY et al.,
Defendants.
No. '878.

Answer of Mary Phillips.

Answer of Mary Phillips to the bill of complaint in the above-entitled action, by leave of court, and consent of parties.

The defendant, Mary Phillips, now and at all times hereafter, saving to herself all and all manner of benefit of exception or otherwise that can or may be had or taken to the many errors, uncertainties and imperfections in the said bill contained, for answer hereto, or to so much thereof as this defendant is advised it is material or necessary for her to make answer to, answering says:

I.

That the said Mary Phillips, who is a feme sole, and the widow of Alexander Phillips, deceased, is a native-born citizen of the United States, residing within the said Ninth Circuit, Southern District of California, and is the owner and in possession of the certain lands hereinafter described affected by the above-entitled action, and that she is not made a party to said action,

but that such lands so occupied and owned by her are covered by and included in the bill of complaint of the United States and in the answer filed therein by the Southern Pacific Railroad Company, defendant, as she is informed, advised and verily believes.

II.

Defendant, according to her information and belief, admits all the allegations in the bill of complaint set forth in pages two, three, four, five, six, seven, eight, nine, ten, eleven, twelve, thirteen and fourteen, in so far as the allegations of said bill refer to and properly allege the act of the Congress of the United States approved July 27th 1866, granting public lands to the Atlantic and Pacific Railroad Company, and the act of Congress approved on the 3d day of March, 1871, and the allegations relating to the different steps and proceedings had and taken by the said defendant, the Southern Pacific Railroad Company, and also all other steps relating to the acts of Congress thereafter, relating to the said grant, dated March 3d, 1887, February 12th, 1896, March 2d, 1896, and also the allegations relating to the suit brought by the plaintiff herein against said Southern Pacific Railroad Company and the proceedings duly had and taken thereunder, and the judgment duly given and made therein, and this defendant, on her own behalf, hereby adopts and alleges each and every of the allegations contained therein relating to the said acts of Congress and the proceedings had thereunder by the said Atlantic and Pacific Railroad Company and the defendant Southern Pacific Railroad Com-

pany in so far as the same relate to the lands of this defendant.

III.

Said defendant, Mary Phillips, further shows that under and in pursuance of said act of March 3d, 1871, and in pursuance of the proceedings had thereunder, the said defendant, Southern Pacific Railroad Company, made claim to the United States Land Department for certain lands, and on or about the 25th day of May, 1883, and prior to the 7th day of January, 1885, the United States granted to said Southern Pacific Railroad Company by its patent dated and issued on the 27th day of Dec., 1883, the certain lands described as follows, to wit:

The fractional east one-half (½) of northeast quarter (¼) of section number five (5), in township three (3) north of range nineteen (19) west, San Bernardino base and meridian, containing seventy-nine and 95/100 (79.95) acres, situate and being in the county of Ventura, State of California.

IV.

Defendant further alleges and shows that said defendant Southern Pacific Railroad Company, prior to the said 7th day of January, 1885, by a contract in writing duly executed by it, agreed to sell said premises to Alexander Phillips for the sum of two hundred and thirty-nine and 85/100 (239.85) dollars with interest, and that afterwards, and in pursuance of said contract and of the said patent from the United States to it, said defendant, The Southern Pacific Railroad Company did, on the 7th day of January, 1885, convey, by its deed in writing, said

premises to said Alexander Phillips. That said ——— was numbered 4171 of deeds made by said company, and the same was duly recorded by said Alexander Phillips in the office of the country recorder of Ventura County on the 13th day of March, 1885, in book 15, page 164 of Deeds; and that prior to the delivery of said deed to said Alexander Phillips by said defendant company, that he paid to said company the full sum of two hundred and thirty-nine and 85/100 (239.85) dollars in lawful money of the United States.

That at the time said Alexander Phillips was the husband of this defendant Mary Phillips, who were both then residing upon said tract of land as their home and that said Alexander Phillips had purchased said land from said defendant company in good faith and at the time fully believed that said company had good title to said land and the right to convey the same to him; that said Alexander Phillips continued to be the owner of said land under and by the terms of said conveyance and by reason of his improvements, possession and residence upon the same until the time of his death; that he died intestate in the county of Ventura, State of California, on the 30th day of November, 1896, leaving surviving him his widow, this defendant, and his children.

That afterwards such proceedings were duly had and taken in the Superior Court of the State of California, in and for the county of Ventura, whereby a petition was duly filed in the office of the clerk of said court, and duly and regularly presented to said court, showing the death of said Alexander Phillips and that this defendant was his widow, and that he died in said county and left prop-

erty among which was set forth the property herein described, and further that said Alexander Phillips died intestate, and praying that this defendant Mary Phillips be appointed as administratrix of his said estate; that thereafter, and upon due notice according to law, this defendant was appointed administratrix of said estate, and and such proceedings were duly had and taken thereafter, whereby said Court did, on the 5th day of June, 1897, set apart and assign the whole of said estate of said deceased to his widow, said defendant Mary Phillips, herein.

Defendant further alleges that the estate left by said Alexander Phillips was of less value than the sum of fifteen hundred dollars, and that under and by virtue of the laws of the State of California, the said Court, as aforesaid, assigned the whole of said estate, which comprised the land hereinbefore set forth, to this defendant; that said order of assignment was afterwards duly recorded in the office of the recordr of said Ventura County, State of California, in book 52 of Deeds, page 79, a copy of which order, with the endorsements thereon is attached hereto, marked defendant's Exhibit "I" and made a part hereof.

V.

Defendant further alleges that she has acquired ownership and title to said land by reason of the foregoing conveyance from said Southern Pacific Railroad Company to her said husband, by reason of the order of said Superior Court of Ventura County assigning the same to her, and that she is now the bona fide purchaser and owner thereof, and is in the possession of the same, and that she

and her said deceased husband have been in the actual possession of said premises ever since the date of said conveyance and have been for a long time prior thereto, and that she and her said husband resided upon, cultivated, inclosed and improved said land during the lifetime of her said husband and that she has continued her residence, cultivation and improvements thereon ever since said time. That her said husband was a native born citizen of the United States and over the age of twenty-one years at the time of said purchase. Defendant also herewith attaches, as Exhibit "2," a true copy of the deed made to said Alexander Phillips by said defendant company on the 7th day of January, 1885, and makes the same a part hereof.

VI.

Defendant further alleges that on the 6th day of September, 1898, she filed an application in the United States Land Office at Los Angeles, California, to make proof, under section four of the act of Congress of March 3d, 1887, Twenty-fourth Statutes at Large, 557, for the adjustment of railroad grants, etc., and asked in said petition that said land be confirmed to her under Patent to the Southern Pacific Railroad Company and under the conveyance of said Southern Pacific Railroad Company to said Alexander Phillips; that at the time she was informed that the same was the proper procedure on her part, and thereafter said land officers gave a notice as required by law and the practice of the Department of the Interior, and that she duly proved her right to said land, but that afterwards the Honorable Commissioner

of the United States land office decided that said la[illegible] of this defendant was involved in this action and referred this defendant to this Court for relief.

VII.

Defendant further alleges and shows that according to her information and belief no suit has been instituted against her or her late husband, said Alexander Phillips, by the United States for the determination of said claim or affecting the said land.

Wherefore, this defendant prays:

That her title to said land, to wit: The fractional east one-half (½) of northeast quarter (¼) of section num[illegible] five (5), in township three (3) north of range nineteen (19) west, San Bernardino base and meridian, containing seventy-nine and 95/100 (79.95) acres, situate and being in the county of Ventura, Sate of California, and heretofore described in paragraph three hereof, be established and confirmed in her, and that it be decreed that the said deed of said Southern Pacific Railroad Company to said Alexander Phillips did by the force and operation of the acts of Congress aforesaid, vest the title in fee simple in said Alexander Phillips in and to all of said land, and that your petitioner has since acquired all the said right and title in and to the said land, and that said title so acquired be confirmed and quieted as good and valid in this defendant, Mary Phillips, free and clear of any claim thereto; that the same is in no wise public land, and for such other and further decree as may be just and right in the premises, and for her costs herein.

J. L. MURPHY,
Solicitor for Defendant.

Exhibit "I."

In the Superior Court of the County of Ventura, State of California.

In the Matter of the Estate of ALEXANDER PHILLIPS, Deceased.

Order Assigning Whole Estate to Widow.

The petition of Mary Phillips, widow of Alexander Phillips, deceased, coming on to be heard on this day, and it appearing to the Court that due and proper notice has been given by the clerk according to law and the practice of this Court, and that said matter was set for hearing on the 5th day of May, 1897, and that the same was duly and regularly continued from that date until the 15th day of May, 1897, and on said date was further continued until this 5th day of June, 1897; and

It appearing to the Court that the inventory and appraisement of the property of the estate of the above-named decedent has been heretofore duly returned and filed herein;

And whereas, it appeared therefrom that the whole estate of said decedent did not exceed in value the sum of fifteen hundred dollars; and

Whereas, it appeared that the decedent had left a widow and minor children, thereupon this Court issued its order requiring all persons interested in said estate to appear and show cause why the whole of said estate should not be assigned to the family of the decedent, and said matter coming one regularly for hearing on this day, and it appearing that the facts above stated are true, and it

being proven that due and legal notice of this proceeding has been given to all persons interested in said estate, and no sufficient cause being shown why the said property should not be so assigned; and

It appearing that the family of said decedent consists of the following persons, viz: Mary Phillips, his widow, Ruth Phillips, Prphie Phillips and Lee Phillips, minor children; and

It appearing that the expenses of the last illness of decedent, all the funeral expenses and all the expenses of administration are paid—

It is therefore ordered that the whole of the estate of said decedent be assigned to said Mary Phillips.

The property of said estate being described as follows, to wit: Fractional east one-half (½) of the northeast one-fourth (¼) of section five (5), township three (3), north range nineteen (19) west, S. B. M., situate in the county of Ventura, State of California, and containing seventy-nine and 95/100 (79.95) acres. The same being the home of the deceased and of his family and the place where the family of the deceased now resides.

Also the following described property: Three work horses, two colts, one cow, two yearling calves, two 2-year old, one calf, forty-four stands of bees, one small honey extractor and tank, three plows, one wagon, one set harness, four dozen chickens, personal clothing, household and kitchen furniture.

W. S. DAY,

Superior Judge Presiding.

Done in open court this 5th day of June, 1897.

Stae of California,
County of Ventura. } ss.

I, A. S. Kenagy, county clerk and ex-officio clerk of the Superior Court do hereby certify the foregoing to be a full, and correct copy of the original on file in my office.

Witness my hand and seal of the Superior Court this 5th day of June, 1897.

A. S. KENAGY,
County Clerk.
By A. R. Crawford,
Deputy.

[Endorsed]: No. 2066. Filed June 5th, 1897. A. S. Kenagy, Clerk. By A. R. Crawford, Deputy.

Endorsed on the back of said order is the following: Recorded at the request of Mrs. Alexander Phillips. June 5, A. D. 1897, at 3 o'clock P. M., in book 52, page 79 of Deeds, Records of Ventura Co., Cal. A. W. Browne, Recorder. By Jno. B. Wagner, Deputy Recorder.

Exhibit No. 2.

DEED No. 4177.

To All to Whom These Presents Shall Come:

The Southern Pacific Railroad Company, a corporatiou duly incorporated and organized under the laws of the State of California, and D. O. Mills and Gerrit L. Lansing, trustees of all the lands of the said Southern Pacific Railroad Company, lying in the State of California, which remained unsold on the first day of April, A. D. 1875, send greeting:

Whereas, on the first day of April, A. D. 1875, the said Southern Pacific Railroad Company conveyed all its lands lying in the State of California, then unsold, of which the lands hereinafter described were and are a part, to D. O. Mills and Lloyd Tevis, to hold in trust as security for the payment of forty-eight thousand bonds, forty-four thousand thereof for the sum of one thousand dollars each, and four thousand thereof for the sum of five hundred dollars each, issued and to be issued by said Southern Pacific Railroad Company in seven series, to be designated by the letters of the alphabet, commencing with the letter "A," and followed by the succeeding letters in regular order to and including the letter "G," series "A" to consist of thirteen thousand bonds for one thousand dollars each, numbered from one to thirteen thousand, both inclusive, and four thousand bonds for five hundred dollars each, numbered from thirteen thousand and one to seventeen thousand, both inclusive; series "B" to "F," both inclusive, to consist of five thousand bonds each for one thousand dollars each, numbered from seventeen thousand and one to forty-two thousand, both inclusive; series "G" to consist of six thousand bonds for one thousand dollars each, numbered from forty-two thousand and one to forty-eight thousand, both inclusive: All of said bonds payable thirty years after date, with interest at the rate of six per centum per annum, payable semi-annually, said series "A" to bear date April first, eighteen hundred and seventy-five, and the said several succeeding series to bear such dates respectively as the board of directors of said Southern Pacific Railroad Company may direct: All of

said bonds aggregating the sum of forty-six millions of dollars.

And whereas, said deed of trust, among other matters, provided that the said Southern Pacific Railroad Company should have the sole and exclusive control and management of said lands, with full power to make sales of the same upon such terms and conditions as might, from time to time, be agreed upon between the said railroad company and the said trustee; and that when such sales had been made, and the purchase money fully paid, the said company and the said trustees should unite in a conveyance in fee simple of the lands so sold to the purchaser or purchasers thereof, which conveyance should absolutely and forever release the lands so conveyed from any and all lien or encumbrance for or on account of said bonds, or any other debt or obligation of the said railroad company.

And whereas, on the 24th day of March, 1883, Lloyd Tevis, one of the trustees, did resign his trust under said conveyance of the first of April, 1875; and whereas, on the 3d day of April, 1883, the said D. O. Mills, the remaining trustee under said conveyance, did, pursuant to the terms of his trust, nominate Gerrit L. Lansing, of the city of San Francisco, and State of California, to fill the vacancy caused by the resignation of said Lloyd Tevis;

And whereas, on the 17th day of April, 1883, the board of directors of the said Southern Pacific Railroad Company, pursuant to the terms of said trust, did ratify and approve said nomination, and did appoint said Gerrit L. Lansing to fill said vacancy; and whereas, on the 18th day

of April, 1883, the said Gerrit L. Lansing did formally accept the position of trustee under said deed of trust.

And whereas, said deed of trust further provided, that for the sake of convenience in making said conveyance, the said trustees should have power to act by attorney, duly nominated and appointed by them jointly by letter of attorney which should be duly acknowledged and recorded in each and all the counties in which said lands, or any part thereof, are situated, and that all deeds made in their names by such attorney should have the same force and effect as if made by them in person.

And whereas, on the 21st day of April, 1883, said trustees, D. O. Mills and Gerrit L. Lansing, acting under the power so vested in them, did nominate, constitute and appoint by letter of attorney duly acknowledged and recorded as aforesaid, Jerome Madden, of the city and county of San Francisco, and State of California, their true and lawful attorney, in their names, place and stead, to make, execute and deliver all conveyances required of them as aforesaid.

And whereas, the said railroad company has sold the lands hereinafter described, pursuant to the foregoing conditions, to Alexander Phillips of the county of Ventura, in the State of California, for the sum of two hundred and thirty-nine 85/100 ($239.85) dollars, which sum has been by him fully paid to the said D. O. Mills and Gerrit L. Lansing, trustees as aforesaid:

Now, therefore, in consideration of the premises, and the said sum of two hundred and thirty-nine 85/100 ($239.85) dollars, the receipt whereof is hereby acknowledged, the said Southern Pacific Railroad Company, and

the said D. O. Mills and Gerrit L. Lansing, trustees as aforesaid, do grant, bargain, sell and convey to the said Alexander Phillips and to his heirs and assigns, the following described tract of land situate, lying and being in the county of Ventura, and State of California, to wit: The factional east half of northeast quarter (Frac. E. ½ of N. E. ¼) of section No. Five (5), in township three (3) north of range nineteen (19) west, San Bernardino base and meridian, containing seventy-nine (95/100) acres, according to the United States Surveys, together with all the privileges and appurtenances thereunto appertaining and belonging, reserving all claim of the United States to the same as mineral land.

To have and to hold the aforesaid premises, to the said Alexander Phillips, his heirs and assigns to his and their use and behoof forever.

In testimony wherof, the said Southern Pacific Railroad Company has caused these presents to be signed by its president and secretary, and sealed with its corporate seal; and the said D. O. Mills and Gerrit L. Lansing, trustees, by their said attorney, Jerome Madden, have subscibed their names and affixed their seals, this seventh (7th) day of January, A. D. 1885.

CHAS. CROCKER,
Pres. S. P. R. R. Co.
J. H. WILLCUTT,
Sec. S. P. R. R. Co.

D. O. MILLS, [Seal]
GERRIT L. LANSING, [Seal]
Trustees.

[Seal] By JEROME MADDEN,
Their Joint Attorney in Fact.

State of California,
City and County of San Francisco. } ss.

On this seventh (7th) day of January, in the year one thousand and eight hundred and eighty-five (1885), before me, Charles J. Torbert, a notary public in and for said city and county of San Francisco, State of California, personally appeared Charles Crocker, known to me to be the pesident and J. L. Willcutt, known to me to be the secretary of the corporation that executed the within instrument; and each of them acknowledged to me that such corporation executed the same; also on this, the day aforesaid, before me, the notary public aforesaid, personally appeared Jeome Madden, known to me to be the person whose name is subscribed to the within instrument as the attorney in fact of D. O. Mills and Gerrit L. Lansing, and acknowleged to me that he subscribed the names of the said D. O. Mills and Gerrit L. Lansing thereto as principals, and his own name as attorney in fact.

In witness whereof, I have hereunto set my hand and affixed my official seal, at my office in the city and county of San Francisco, State of California, on the day and year above written.

[Seal] CHARLES J. TORBERT,
Notary Public in and for the City and County of San Francisco, and State of California.

[Endorsed]: Deed No. 4177. Southern Pacific Railroad Company. D. O. Mills and Gerrit L. Lansing, Trustees, to Alexander Phillips. Dated January 7th, 1885. Re-

corded at the request of Alexander Phillips, March 13th, 1885, at 35 Minutes past 3 P. M., in book 15 of Deeds, page 164, Records of Ventura Co., Cal. S. H. Warring, County Recorder.

State of Califonia, } ss.
County of Ventura. }

Mary Phillips, being duly sworn, deposes and says that she is one of the defendants in the above-entitled action; that she has heard read the foregoing answer and knows the contents therof that the same is true of her own knowledge, except as to the matters which are therein stated on her information or belief, and as to those matters that she believes it to be true.

MARY PHILLIPS.

Subscribed and sworn to before me this 26th day of Jan., 1900.

[Seal C. C. ELKINS,

Notary Public in and for Ventura Co., State of California.

[Endorsed]: No. 878. Original. In the Circuit Court of the United States, Ninth Circuit, Southern District of California. The United States, Plaintiff, vs. Southern Pacific R. R. Co. and Others, Defendants. Answer of Mary Phillips. Received copy of the within Jany. 29, 1900. J. H. Call, Atty. for Compl. Filed Feb. 1, 1900. Wm. M. Van Dyke, Clerk. Chas. N. Williams, Deputy. J. L. Murphey, Rooms 41, 42, 43 and 44, Phillips' Block, Telephone Main 912, Los Angeles, California, Attorney for Deft. Mary Phillips.

At a stated term, to wit, the January Term, A. D. 1900, of the Circuit Court of the United States of America, of the Ninth Judicial Circuit, in and for the Southern District of California, held at the court-room in the city of Los Angeles, on Friday, the sixth day of July, in the year of our Lord, one thousand nine hundred. Present: The Honorable ERSKINE M. ROSS, Circuit Judge.

THE UNITED STATES OF AMERICA,
Complainants,
vs.
THE SOUTHERN PACIFIC RAILROAD COMPANY et al.,
Defendants.
No. 878.

Order as to Publication of Testimony and Amending Bill of Complaint.

On motion of J. H. Call, Esq., Special Assistant United States Attorney, of counsel for complainants, it is ordered that all of the testimony taken herein and returned into the clerk's office, be, and hereby is published herein; and it having been stipulated before the special examiner, Stephen Potter, at San Francisco, that the bill of complaint in this cause may be deemed to be amended by adding on page 12, line 9, after the words Exhibit "B," the words "without prejudice," and that the clerk of the court may, by interlineation insert said words, "without prejudice" at the place mentioned, now on motion of Joseph H. Call, Esq., of coun-

sel as aforesaid, it is ordered that said bill be accordingly amended, and that the clerk interline said words "without prejudice" after the words Exhibit "B," in line 14 of page 15 of the original bill, where they occur in the original bill.

[Endorsed]: No. 878. U. S. Circuit Court, Ninth Circuit, Southern District of Califorina. The United States of America vs. The Southern Pacific Railroad Company et al. Copy Order that Clerk Amend Bill of Complaint. Filed Dec. 15, 1902. Wm. M. Van Dyke, Clerk. Chas. N. Williams, Deputy.

In the Circuit Court of the United States, Ninth Judicial Circuit, Southern District of California.

UNITED STATES,
Complainant,
vs.
SOUTHERN PACIFIC RAILROAD COMPANY, HOMER S. KING, as Trustee, CENTRAL TRUST COMPANY of New York, as Trustee, M. L. WICKS, ALICE V. SLOSSON, IVAR A. WEID, JAMES MAIR, POMONA LAND AND WATER COMPANY, T. BANBURY, B. CHANDLER, H. H. LINVILLE, J. R. NEVIN, HENRY M. LOUD, WILLIAM THORPE, FAIRMOUNT LAND AND WATER COMPANY, ALICE V. SLOSSON, THE SAN FRANCISCO SAVINGS UNION, BANK OF AMERICA, H. L. MACNEIL, W. D. TURNER, MARY J. MACKEY, GEO. C. HAGAR and MARY J. PHILLIPS, et al.,
Defendants.
No 878.

Enrollment.

The complainant filed its bill of complaint herein on the 13th day of April, 1899, which is hereto annexed.

The complainant filed an amendment to its bill of complaint herein on the 13th day of April, 1899, which is hereto annexed.

A writ of subpoena requiring the defendants, Southern Pacific Railroad Company, D. O. Mills and Homer S. King, trustees, The Central Trust Company of New York, trustee, and M. L. Wicks, Alice V. Slosson, Ivar A. Weid, James Mair, Pomona Land and Water Company, a corporation, T. Banbury, Burdett Chandler, H. H. Linville, J. R. Nevin, Henry M. Loud, William Thorpe, Fairmount Land and Water Company, to appear and answer in said cause was thereupon, on said 13th day of April, 1899, issued, returnable on the 5th day of June, 1899, which is hereto annexed.

A duplicate writ of subpoena directed to the United States Marshal for the Northern District of California, requiring said defendants to appear and answer said bill of complaint was thereupon on said 13th day of April, 1899, issued, returnable on said 5th day of June, 1899, which is hereto annexed.

On the 2d day of June, 1899, the defendants, Southern Pacific Railroad Company and Homer S. King, trustee, appeared herein by Wm. Singer, J., Esq., their solicitor and Wm. F. Herrin, Esq., their Counsel.

The defendants M. L. Wicks, Alice V. Slosson, Ivar A. Weid, James Mair, Pomona Land and Water Company, T. Banbury, B. Chandler, H. H. Linville, J. R. Nevin, Henry M. Loud, William Thorps and Fairmount Land and Water Company appeared herein on the 2d day of June, 1899, by H. V. Reardon, Esq., their solicitor, and J. E. Foulds, Esq., their counsel.

On the 5th day of June, 1899, the defendant Alice

V. Slosson, appeared herein by T. M. Stewart, Esq., her solicitor.

On the 5th day of June, 1899, the answer of the defendant Alice V. Slosson to the bill of complaint was filed herein and is hereto annexed.

On the 14th day of July, 1899, the answer of defendants Southern Pacific Railroad Company, Homer S. King, trustee, M. L. Wicks, Alice V. Slosson, Ivar A. Weid, James Mair, Pomona Land and Water Company, T. Banbury, B. Chandler, H. H. Linville, J. R. Nevin, Henry M. Loud, William Thorpe, and Fairmount Land and Water Company, to the bill of complaint, was filed herein and is hereto annexed.

On the 17th day of July, 1899, the court made and entered an order herein that the defendant The Central Trust Company of New York, appear herein by the first Monday in September, 1899, and plead, answer or demur to the bill of complaint by the first Monday of October, 1899, a copy of which order is hereto annexed.

The replication of complainant to the answer of Southern Pacific R. R. Co. et al., was filed herein on the 2d day of August, 1899, and is hereto annexed.

On the 1st day of September, 1899, the defendant Central Trust Company of New York appeared herein by Wm. Singer, Jr., Esq., its solicitor, and Wm. F. Herrin, Esq., its counsel.

On the 18th day of September, 1899, the Court made and entered an order herein that the answer of the defendants Southern Pacific Railroad Company, and others, stand for, and be deemed the answer of the de-

fendant Central Trust Company of New York, a copy of which order is hereto annexed.

On the 28th day of September, 1899, the defendants San Francisco Savings Union (a corporation), the Bank of America (a corporation), H. L. Macneil and W. D. Turner, appeared herein by R. H. F. Variel, Esq., their Solicitor.

On the 28th day of September, 1899, the answer of defendants San Francisco Savings Union (a corporation), the Bank of America (a corporation), H. L. Macneil and W. D. Turner, to the bill of complaint, was filed herein and is hereto annexed.

On the 12th day of October, 1899, the answer of defendant Mary J. Mackey to the bill of complaint, was filed herein and is hereto annexed.

On the 15th day of November, 1899, the answer of defendant Geo. C. Hagar, to the bill of complaint was filed herein and is hereto annexed.

On the 29th day of January, 1900, the Court made and entered an order herein allowing Mary Phillips to become a party herein and to file her answer to complainant's bill herein, a copy of which order is hereto annexed.

On the 1st day of February, 1900, the answer of defendant Mary Phillips to the bill of complaint, was filed herein and is hereto annexed.

Testimony was thereafter taken on behalf of the respective parties and filed in the clerk's office of said Circuit Court.

On the 4th day of June, 1900, being a day in the

January term, A. D. 1900, of said Circuit Court, present the Honorable Erskine M. Ross, Circuit Judge, said cause was submitted to the Court for its consideration and decison upon the pleadings, proofs and upon briefs which were thereafter filed on behalf of the respective parties by counsel.

On the 6th day of July, 1900, the Court made and entered an order herein that the bill of complaint be amended and that the clerk of the court interline certain words in the original bill, a copy of which order is hereto annexed.

The bill of complaint was so amended by the clerk on the 6th day of July, 1900.

On the 9th day of July, 1902, the Court made and entered an order herein that a decree be entered that the complainant is entitled to judgment against the defendant railroad company, at the minimum Government price for all those portions of the lands in suit for which it has been paid so much by bona fide purchasers, and for those portions thereof for which it has been paid less than such Government price, the full amount so paid, and that such of the bona fide purchasers as have paid to the defendant railroad company the full Government price of such lands are entitled to a confirmation of the lands so purchased and paid for, and those of such purchasers as have paid to the company for the lands purchased by them respectively, less than the Government price thereof, are entitled to like confirmation upon paying to the complainant the difference between the amount paid by them

to the defendant railroad company and such minimum Government price.

On the 15th day of December, 1902, a final decree in accordance with said order was signed, filed, entered and recorded herein, and is hereto annexed.

In the Circuit Court of the United States, Ninth Circuit, Southern District of California.

IN EQUITY.

UNITED STATES, Complainant,

vs.

SOUTHERN PACIFIC RAILROAD COMPANY, et al., Defendants. No. 878.

Final Decree.

This cause came on for final decree, in open court, this 15th day of December, 1902.

The complainant, the United States, appeared by Mr. Joseph H. Call, special assistant United States attorney.

The defendants, Southern Pacific Railroad Company, Homer S. King as trustee, Central Trust Company of New York as trustee, M. L. Wicks, Alice V. Slosson, Ivar A. Weid, James Mair, Pomona Land and Water Company, T. Banbury, B. Chandler, H. H. Linville, J. R. Nevin, Henry M. Loud, William Thorpe, and Fair-

mount Land and Water Company, were duly served with process herein, and appeared by Mr. Wm. F. Herrin their counsel, Mr. Wm. Singer, Junior, their attorney, with Mr. T. M. Stewart as solicitor for Alice V. Slosson. The San Francisco Savings Union, Bank of America, H. L. Macneil and W. D. Turner, who answered herein without service and were thereafter made defendants by stipulation, appeared by Mr. R. H. F. Variel, their solicitor; Mary J. Mackay, who answered herein without service and was thereafter made defendant by stipulation, appeared by Mr. S. V. Landt, her solicitor; and Geo. C. Hagar, who answered herein without service and was thereafter made defendant by stipulation, appeared by Messrs. Borden & Carhart, his solicitors; and Mary Phillips, who answered herein without service, appeared by Mr. J. L. Murphey, her solicitor.

Except as hereinbefore set forth, no person appeared or answered herein, but

The remaining defendants hereinafter mentioned in this decree were too numerous to be made parties and were of a class sufficiently represented by those defendants similarly interested and situated, who have appeared and answered in this cause.

Issue having been joined, the testimony having been taken, and the cause having been duly argued and submitted, the Court being fully advised in the premises, adjudged as follows:

Subdivision I.

The court finds and determines that all lands in this decree described are situated within the Southern District of California—all of which lands are hereinafter described with reference to San Bernardino base and meridian.

Subdivision II.

The court finds and determines that all the lands described in this subdivision II, are within the limits of the grant made unto the Atlantic and Pacific Railroad Company by act of Congress approved on July 27th, 1866, as established by the map of definite location filed by that company in the general land office during the year 1872—which grant was forfeited unto the United States by act of Congress approved on July 6th, 1886; that none of the said lands are situated within the limits, primary or indemnity, of the grant made unto the Southern Pacific Railroad Company by section 18 of the said act of Congress of July 27th, 1866; that in former litigations between the United States and the said Southern Pacific Railroad Company, it was finally and conclusively adjudged and determined, as between the United States and any claim to said lands by said company, by virtue of the act of Congress of March 3d, 1871, that such lands became, upon the passage of the forfeiture act of July 6th, 1886, the property of the United States, and by force of that act were restored to the public domain, without the Southern Pacific Railroad Company having acquired any interest therein, that affected the power of the United States to forfeit and restore them to the public domain; that all of the said lands have been erroneously patented by the Uni-

ted States unto the said Southern Pacific Railroad Company; that the said Southern Pacific Railroad Company sold all of the said lands to bona fide purchasers thereof, at purchase prices paid, in each instance, equal to or in excess of one dollar and twenty-five cents per acre; that the title of each of such purchasers, to the lands of their respective purchasers, as set forth in the several items of this subdivision II, was confirmed unto such purchasers by acts of Congress approved on March 3d, 1887, and March 2d, 1896; and that the defendant Southern Pacific Railroad Company is indebted to the United States for all of the said land so sold, at the rate of one dollar and twenty-five cents per acre, with interest at six per cent per annum from and after the date of this decree.

Item 1. It is therefore ordered, adjudged and decreed that the title of George Chaffey, Jr., and W. B. Chaffey, their heirs and assigns, is hereby confirmed in and to the fractional northeast quarter (N. E. ¼) of section five (5), township one (1) south range six (6) west, containing one hundred and sixty-seven (167) acres; also in and to the northwest quarter (N. W. ¼) of section nine (9), township one (1) south, range six (6) west, containing one hundred sixty (160) acres.

Item 2. It is further ordered, adjudged and decreed that the title of the Pomona Land and Water Company, its successors and assigns, is hereby confirmed in and to the north half (N. ½) of section twenty-one (21), township one (1) south, range seven (7) west, containing three hundred twenty (320) acres; also in and to the south half (S. ½) of section twenty-one (21), township one (1) south, range seven (7) west, containing three hundred

twenty (320) acres; also in and to the west half of northeast quarter (W. ½ of N. E. ¼), west half of southeast quarter (W. ½ of S. E. ¼) and west half (W. ½) of section one (1), township one (1) south, range eight (8) west, containing four hundred eighty and fifty-six hundredths (480.56) acres; also in and to all of section eleven (11), township one (1) south, range eight (8) west, containing six hundred forty (640) acres; also in and to all of fractional section fifteen (15), township one (1) south, range eight (8) west, containing four hundred and sixteen (416) acres; also in and to lots one (1) and two (2) of section twenty-one (21), township one (1) south, range eight (8) west, containing thirty-two and ten hundredths (32.10) acres; also in and to the north half of northeast quarter (N. ½ of N. E. ¼) of section twenty-three (23), township one (1) south, range eight (8) west, containing eighty (80) acres; also in and to lots one (1), two (2), three (3) and four (4), of section twenty-five (25), township one (1) south, range eight (8) west, containing one hundred and thirty-eight and thirty-four hundredths (138.34) acres; also in and to the south half of southeast quarter (S. ½ of S. E. ¼) and south half of southwest quarter (S. ½ of S. W. ¼) of section twenty-seven (27), township one (1) south, range eight (8) west, containing one hundred and sixty (160) acres; also in and to the northwest quarter of northwest quarter (N. W. ¼ of N. W. ¼) of section thirteen (13), township one (1) north, range eight (8) west, containing forty (40) acres; also in and to the west half of southwest quarter (W. ½ of S. W. ¼) of section thirteen (13), township one (1) north, range eight (8) west, containing eighty (80) acres.

Item 3. It is further ordered, adjudged and decreed that the title of Henry B. Botsford, his heirs and assigns, is hereby confirmed in and to the east half of northeast quarter (E. ½ of N. E. ¼) and east half of southeast quarter (E. ½ of S. E. ¼) of section one (1), township one (1) south, range eight (8) west, containing one hundred and sixty and four hundredths (160.04) acres.

Item 4. It is further ordered, adjudged and decreed that the title of C. M. Wright, his heirs and assigns, is hereby confirmed in and to lots six (6) and seven (7) of section thirty-three (33), township one (1) south, range nine (9) west, containing forty-eight and sixteen hundredths (48.16) acres.

Item 5. It is further ordered, adjudged and decreed that the title of D. H. Collins, his heirs and assigns, is hereby confirmed in and to lot five (5), of section thirty-three (33), township one (1) south, range nine (9) west, containing thirty-one and seventy-nine hundredths (31.79) acres.

Item 6. It is further ordered, adjudged and decreed that the title of C. M. Wright and Jane Lynch, their heirs and assigns, is hereby confirmed in and to the south half of southwest quarter (S. ½ of S. W. ¼) and lots one (1), two (2), three (3), and four (4) of section thirty-five (35), township one (1) south, range nine (9) west, containing one hundred and seventy-six (176) acres.

Item 7. It is further ordered adjudged and decreed that the title of R. W. Morse, his heirs and assigns, is hereby confirmed in and to lot one (1) of section one (1), in township one (1) south, range eleven (11) west, con-

taining fourteen and ninety-seven hundredths (14.97) acres.

Item 8. It is further ordered, adjudged and decreed that the title of L. J. Rose, his heirs and assigns, is hereby confirmed in and to lot one of northwest quarter (lot 1 of N. W. ¼) of section seven (7), in township one (1) south, range eleven (11) west, containing forty (40) acres; also in and to the east half of southeast quarter (E. ½ of S. E. ¼) and lots one (1) and two (2) of section three (3), in township one (1) south, range fourteen (14) west, containing one hundred and twenty-four and fifty-three hundredths (124.53) acres.

Item 9. It is further ordered, adjudged and decreed that the title of T. W. Corder, his heirs and assigns, is hereby confirmed in and to lot five of southeast quarter (lot 5 of S. E. ¼) of section seven (7), in township one (1) south, range eleven (11) west, containing ten and eighty-three hundredths (10.83) acres.

Item 10. It is further ordered, adjudged and decreed that the title of Thomas Pollard, his heirs and assigns, is hereby confirmed in and to lot six of southeast quarter (lot 6 of S. E. ¼) of section seven (7), in township one (1) south, range eleven (11) west, containing ten and sixty-five hundredths (10.65) acres; also in and to lots seven and eight of northeast quarter (lots 7 and 8 of N. E. ¼) of section seven (7), in township one (1) south, range eleven (11) west, containing twenty and seventy-six hundredths (20.76) acres.

Item 11. It is further ordered, adjudged and decreed that the title of Austin Brown, his heirs and assigns, is hereby confirmed in and to the east half of northeast quar-

ter (E. ½ of N. E. ¼) and lot six (6) of section thirteen (13), in township one (1) south, range eleven (11) west, containing one hundred and seven and eighty-six hundredths (107.86) acres.

Item 12. It is further ordered, adjudged and decreed that the title of Homer Santee, his heirs and assigns, is hereby confirmed in and to the west half of northeast quarter (W. ½ of N. E. ¼), east half of northwest quarter (E. ½ of N. W. ¼), north half of southwest quarter (N. ½ of S. W. ¼) and lots one (1), two (2), three (3), four (4) and five (5) of section thirteen (13), in township one (1) south, range eleven (11) west, containing three hundred and seventy-three and sixty-eight hundredths (373.68) acres.

Item 13. It is further ordered, adjudged and decreed, that the title of Milton Santee, his heirs and assigns, is hereby confirmed in and to lot one (1) of section eleven (11), in township one (1) south, range thirteen (13) west, containing nineteen hundredths (.19) of an acre.

Item 14. It is further ordered, adjudged and decreed, that the title of Solomon Richardson, his heirs and assigns is hereby confirmed in and to lot one (1) of section three (3), in township one (1) south, range twelve (12) west, containing seventeen and thirty-one hundredths (17.31) acres; also in and to the east half of northeast quarter (E. ½ of N. E. ¼) of section thirteen (13), in township one (1) south, range twelve (12) west, containing eighty (80) acres.

Item 15. It is further ordered, adjudged and decreed that the title of B. D. Wilson, his heirs and assigns, is hereby confirmed in and to lot five (5) of section three

(3), in township one (1) south, range twelve (12) west, containing two and forty-five hundredths (2.45) acres.

Item 16. It is further ordered, adjudged and decreed that the title of P. Wilhelm Poulson, his heirs and assigns, is hereby confirmed in and to lots two (2) and three (3) of section five (5), in township one (1) south, range twelve (12) west, containing six and eighty-seven hundredths (6.87) acres.

Item 17. It is further ordered, adjudged and decreed that the title of Hancock M. Johnson, his heirs and assigns, is hereby confirmed in and to the northeast quarter (N. E. ¼) of section seven (7), in township one (1) south, range twelve (12) west, containing one hundred sixty (160) acres; also in and to the northeast quarter of southwest quarter (N. E. ¼ of S. W. ¼) of section seven (7), in township one (1) south, range twelve (12) west, containing forty (40) acres; also in and to the northeast quarter of northeast quarter (N. E. ¼ of N. E. ¼), southeast quarter of southeast quarter (S. E. ¼ of S. E. ¼) and lots one (1) and four (4) of section thirteen (13), in township one (1) south, range thirteen (13) west, containing ninety-nine and twenty-eight hundredths (99.28) acres.

Item 18. It is further ordered, adjudged and decreed that the title of H. M. Johnson, his heirs and assigns, is hereby confirmed in and to lots three (3) and four (4) of section seven (7), in township one (1) south, range twelve (12) west, containing eighty-three and sixteen hundredths (83.16) acres.

Item 19. It is further ordered, adjudged and decreed that the title of Alice V. Slosson, her heirs and assigns,

is hereby confirmed in and to lots one (1) and two (2) of section eleven (11), in township one (1) south, range twelve (12) west, containing thirty-four and forty hundredths (34.40) acres.

Item 20. It is further ordered, adjudged and decreed that the title of Mirah Jesus de Shorb, Annie Wilson and Ruth Wilson, their heirs and assigns, is hereby confirmed in and to the northwest quarter of northwest quarter (N. W. ¼ of N. W. ¼) of section eleven (11), in township one (1) south, range twelve (12) west, containing forty (40) acres.

Item 21. It is further ordered, adjudged and decreed that the title of David F. Hall and Henry Hamilton, trustees, their heirs and assigns, is hereby confirmed in and to the southeast quarter of northwest quarter (S. E. ¼ of N. W. ¼) and northeast quarter of southwest quarter, (N. E. ¼ of S. W. ¼) of section eleven (11), in township one (1) south, range twelve (12) west, containing eighty (80) acres.

Item 22. It is further ordered, adjudged and decreed that the title of the Lake Vineyard Land and Water Association, its successors and assigns, is hereby confirmed in and to the northeast quarter (N. E. ¼) of section fifteen (15), in township one (1) south, range twelve (12) west, containing one hundred and sixty (160) acres.

Item 23. It is further ordered, adjudged and decreed that the title of Catalina Batz, her heirs and assigns, is hereby confirmed in and to the southeast quarter of southeast quarter (S. E. ¼ of S. E. ¼) and northeast quarter (N. E.¼) of section seventeen (17), in township one (1)

south, range twelve (12) west, containing two hundred (200) acres; also in and to the north half of southeast quarter (N. ½ of S. E. ¼) of section nineteen (19), in township one (1) south, range twelve (12) west, containing eighty (80) acres; also in and to the northwest quarter of southwest quarter (N. W. ¼ of S. W. ¼ and north half (N. ½) of section twenty-nine (29), in township one (1) south, range twelve (12) west, containing three hundred and sixty (360) acres.

Item 24. It is further ordered, adjudged and decreed that the title of James R. Brown, his heirs and assigns, is hereby confirmed in and to the northwest quarter of northwest quarter (NW. ¼ of NW. ¼) of section nineteen (19), in township one (1) south, range twelve (12) west, containing forty-two and eighty-seven hundredths (42.87) acres; also in and to lots three (3) and four (4) of section twenty-five (25), in township one (1) south, range thirteen (13) west, containing eighteen and fifty-seven hundredths (18.57) acres.

Item 25. It is further ordered, adjudged and decreed that the title of Alexander Repetto, his heirs and assigns, is hereby confirmed in and to the southeast quarter (SE ¼) of section twenty-nine (29), in township one (1) south, range twelve (12) west, containing one hundred and sixty (160) acres.

Item 26. It is further ordered, adjudged and decreed that the title of Jean Pedelaborde and Francisco S. Pedelaborde, their heirs and assigns, is hereby confirmed in and to the east half of northeast quarter (E. ½ of NE. ¼), east half of southeast quarter (E ½ of S. E. ¼) and northwest quarter (NW. ¼) of section thirty-one (31), in town-

ship one (1) south, range twelve (12) west, containing three hundred and twenty-seven and sixty-one hundredths (327.61) acres.

Item 27. It is further ordered, adjudged and decreed that the title of Charles Yoerger, his heirs and assigns, is hereby confirmed in and to lot ten (10) of section three (3), in township one (1) south, range fourteen (14) west, containing forty and sixty-six hundredths (40.66) acres.

Item 28. It is further ordered, adjudged and decreed, that the title of Ivar A. Weld, his heirs and assigns, is hereby confirmed in and to the south half of northeast quarter (S. ½ of NE. ¼) of section three (3), in township one (1) south, range fourteen (14) west, containing eighty (80) acres; also in and to the northwest quarter of northwest quarter (NW. ¼ of NW. ¼) of section eleven (11), in township one (1) south, range fourteen (14) west, containing forty (40) acres.

Item 29. It is further ordered, adjudged and decreed, that the title of John L. Plummer, his heirs and assigns, is hereby confirmed in and to the southwest quarter northwest quarter (SW. ¼ of NW. ¼) and lots three (3), four (4), five (5) and seven (7) of section three (3), in township one (1) south, range fourteen (14) west, containing one hundred and thirty-nine and thirty-two hundredths (139.32) acres.

Item 30. It is further ordered, adjudged and decreed, that the title of M. L. Yager, his heirs and assigns, is hereby confirmed in and to the east half of southwest quarter (E. ½ of SW. ¼), southwest quarter of southwest quarter (SW. ¼ of SW. ¼), east half of northeast quarter (E. ½ of NE. ¼) and southeast quarter (SE. ¼) of section five (5),

in township one (1) south, range fourteen (14) west, containing three hundred and sixty and eighteen hundredths (360.18) acres.

Item 31. It is further ordered, adjudged and decreed that the title of Oliver Johnson, his heirs and assigns, is hereby confirmed in and to the northwest quarter of southwest quarter (NW. ¼ of SW. ¼), west half of northeast quarter (W. ½ of NE. ¼) and northwest quarter (NW. ¼) of section five (5), in township one (1) south, range fourteen (14) west, containing two hundred and eighty and thirty-six hundredths (280.36) acres.

Item 32. It is further ordered, adjudged and decreed that the title of W. H. Carlin, his heirs and assigns, is hereby confirmed in and to the east half of northeast quarter (E. ½ of NE. ¼) of section seven (7), in township one (1) south, range fourteen (14) west, containing eighty (80) acres.

Item 33. It is further ordered, adjudged and decreed that the title of F. B. Alderson, his heirs and assigns, is hereby confirmed in and to the west half of northeast quarter (W. ½ of NE. ¼) of section seven (7), in township one (1) south, range fourteen (14) west, containing eighty (80) acres.

Item 34. It is further ordered, adjudged and decreed that the title of William W. White, his heirs and assigns, is hereby confirmed in and to the northwest quarter (NW. ¼) of section seven (7), in township one (1) south, range fourteen (14) west, containing one hundred and sixty and forty-four hundredths (160.44) acres.

Item 35. It is further ordered, adjudged and decreed

that the title of George Cate, his heirs and assigns, is hereby confirmed in and to the north half of southeast quarter (N. ½ of SE. ¼) and lot three (3) of section seven (7), in township one (1) south, range fourteen (14) west, containing one hundred and thirteen and thirty-three hundredths (113.33) acres.

Item 36. It is further ordered, adjudged and decreed that the title of Melbourne W. Sinnott, his heirs and assigns, is hereby confirmed in and to the southwest quarter of southeast quarter (SW. ¼ of SE. ¼) of section seven (7), in township one (1) south, range fourteen (14) west, containing forty (40) acres.

Item 37. It is further ordered, adjudged and decreed that the title of Jennie P. Hill, her heirs and assigns, is hereby confirmed in and to the east half of southeast quarter (E. ½ of SE. ¼) of section eleven (11), in township one (1) south, range fourteen (14) west, containing eighty (80) acres.

Item 38. It is further ordered, adjudged and decreed that the title of James Mattison Sutton, his heirs and assigns, is hereby confirmed in and to the west half of southeast quarter (W. ½ of SE. ¼) of section eleven (11), in township one (1) south, range fourteen (14) west, containing eighty (80) acres.

Item 39. It is further ordered, adjudged and decreed that the title of Joseph M. Sherburne, his heirs and assigns, is hereby confirmed in and to lots one (1), two (2), three (3) and four (4), of section twenty-three (23), in township one (1) south, range fourteen (14)

west, containing fifty-one and twelve-hundredths (51.12) acres.

Item 40. It is further ordered, adjudged and decreed that the title of Germain Pellissier, his heirs and assigns, is hereby confirmed in and to the northwest quarter (NW. ¼) of section twenty-five (25), in township one (1) south, range fourteen (14) west, containing one hundred sixty (160) acres.

Item 41. It is further ordered, adjudged and decreed, that the title of James Mair, his heirs and assigns, is hereby confirmed in and to lot one (1), southeast quarter of northeast quarter (SE. ¼ of NE. ¼), north half of southeast quarter (N. ½ of SE. ¼), southeast quarter of southeast quarter (SE. ¼ of SE. ¼) and east half of southwest quarter (E. ½ of SW. ¼) of section one (1), in township one (1) south, range fifteen (15), containing two hundred and eighty (280) acres.

Item 42. It is further ordered, adjudged and decreed, that the title of M. J. Golden, his heirs and assigns, is hereby confirmed in and to the east half of northwest quarter (E. ½ of NW. ¼), southwest quarter of northeast quarter (SW. ¼ of NE. ¼), and lot two (2) of section one (1), in township one (1) south, range fifteen (15) west, containing one hundred and sixty (160) acres.

Item 43. It is further ordered, adjudged and decreed that the title of Mrs. C. Tullis, her heirs and assigns, is hereby confirmed in and to the southwest quarter of southeast quarter (SW. ¼ of SE. ¼) of section one (1),

in township one (1) south, range fifteen (15) west, containing forty acres (40) acres.

Item 44. It is further ordered, adjudged and decreed, that the title of Noah Levering, his heirs and assigns, is hereby confirmed in and to the southwest quarter of southwest quarter (SW. ¼ of SW. ¼) of section one (1), in township one (1) south, range fifteen (15) west, containing forty (40) acres; also in and to the northeast quarter of northeast quarter (NE. ¼ of NE. ¼) of section eleven (11) in township one (1) south, range fifteen (15) west, containing forty (40) acres.

Item 45. It is further ordered, adjudged and decreed, that the title of Leander Shores, his heirs and assigns, is hereby confirmed in and to the northwest quarter of southwest quarter (NW. ¼ of SW. ¼) of section one (1), in township one (1) south, range fifteen (15) west, containing forty (40) acres.

Item 46. It is further ordered, adjudged and decreed, that the title of T. J. Moffet, his heirs and assigns, is hereby confirmed in and to the west half of southeast quarter (W. ½ of S E. ¼) and west half of northeast quarter (W. ½ of NE. ¼) of section eleven (11), in township one (1) south, range fifteen (15) west, containing one hundred and sixty (160) acres.

Item 47. It is further ordered, adjudged and decreed that the title of H. E. Martens, his heirs and assigns, is hereby confirmed in and to the northeast quarter of southeast quarter (NE. ¼ of SE. ¼) and southeast quarter of northeast quarter (SE. ¼ of NE. ¼) of sec-

tion eleven (11) in township one (1) south, range fifteen (15) west, containing eighty (80) acres.

Item 48. It is further ordered, adjudged and decreed that the title of Pierce E. Benedict, his heirs and assigns, is hereby confirmed in and to the south half of northwest quarter (S. ½ of NW. ¼) and southwest quarter (SW. ¼) of section eleven (11), in township one (1) south, range fifteen (15) west, containing two hundred forty (240) acres.

Item 49. It is further ordered, adjudged and decreed that the title of Mary F. Ritchie, her heirs and assigns, is hereby confirmed in and to the southeast quarter of southeast quarter (SE. ¼ of SE. ¼) of section eleven (11), in township one (1) south, range fifteen (15) west, containing forty (40) acres.

Item 50. It is further ordered, adjudged and decreed that the title of B. Chandler, his heirs and assigns, is hereby confirmed in and to lot one (1) of section three (3), in township two (2) south, range eleven (11) west, containing twenty-one and thirty-five hundredths (21.35) acres.

Item 51. It is further ordered, adjudged and decreed that the title of Robert Turnbull, his heirs and assigns, is hereby confirmed in and to the northeast quarter of southeast quarter (N. E. ¼ of S. E. ¼), and south half of southeast quarter (S. ½ of S. E. ¼), of section nine (9), in township two (2) south, range eleven (11) west, containing one hundred and twenty (120) acres.

Item 52. It is further ordered, adjudged and decreed that the title of Alice Woolfskill Barrows, her heirs and

assigns, is hereby confirmed in and to lots one (1) and two (2) of section three (3), in township two (2) south, range thirteen (13) west, containing four (4) acres.

Item 53. It is further ordered, adjudged and decreed that the title of Martha Vaughan, her heirs and assigns, is hereby confirmed in and to a fraction of lot one (1) of section (5), in township two (2) south, range thirteen (13) west, containing seven hundredths (.07) of an acre.

Item 54. It is further ordered, adjudged and decreed, that the title of James E. Blair, his heirs and assigns, is hereby confirmed in and to a fraction of lot one (1) of section five (5), in township two (2) south, range thirteen (13) west, containing twenty-six hundredths (.26) of an acre.

Item 55. It is further ordered, adjudged and decreed that the title of Camille Garnier, her heirs and assigns, is hereby confirmed in and to the south half of northeast quarter (S. ½ of N. E. ¼), of section eleven (11), in township two (2) south, range fourteen (14) west, containing eighty (80) acres.

Item 56. It is further ordered, adjudged and decreed that the title of E. L. Spitley and James T. Hoblit, their heirs and assigns, is hereby confirmed in and to the southwest quarter (S. W. ¼), of section thirteen (13), in township two (2) south, range fourteen (14) west, containing one hundred and sixty (160) acres.

Item 57. It is further ordered, adjudged and decreed that the title of Louis Sentous, his heirs and assigns, is hereby confirmed in and to all of fractional section seventeen (17), in township two (2) south, range fourteen (14)

west, containing three hundred and ninety-two and fifty-nine hundredths (392.59) acres.

Item 58. It is futher ordered, adjudged and decreed, that the title of R. W. Waterman, his heirs and assigns, is hereby confirmed in and to the southwest quarter of northeast quarter (SW. ¼ of NE. ¼), west half of southeast quarter (W. ½ of SE. ¼), and west half (W. ½), of section eleven (11), township one (1) north, range four (4) west, containing four hundred and forty (440) acres.

Item 59. It is further ordered, adjudged and decreed, that the title of Aaron Harrison, his heirs and assigns, is hereby confirmed in and to the fractional southwest quarter (SW. ¼), of section thirteen (13), in township one (1) north range four (4) west, containing one hundred and thirteen and fifty-four hundredths (113.54) acres.

Item 60. It is further ordered, adjudged and decreed, that the title of H. H. Linville, his heirs and assigns, is hereby confirmed in and to the fractional northwest quarter (NW. ¼) of section twenty-seven (27), in township one (1) north, range five (5) west, containing one hundred and fifty two and forty hundredths (152.40) acres.

Item 61. It is further ordered, adjudged and decreed, that the title of Frank Bohnart, his heirs and assigns, is hereby confirmed in and to lots two (2) and three (3) of northeast quarter (NE. ¼), of section twenty-seven (27), in township one (1) north, range five (5) west, containing fifty-seven and ninety-one hundredths (57.91) acres.

Item 62. It is further ordered, adjudged and decreed,

that the title of E. H. Morse, his heirs, successors and assigns, is hereby confirmed in and to the fractional southeast quarter (SE. ¼), of section twenty-seven (27), in township one (1) north, range five (5) west, containing one hundred and fifty-nine and ninety-nine hundredths (159.99) acres.

Item 63. It is further ordered, adjudged and decreed, that the title of J. R. Nevin, his heirs and assigns, is hereby confirmed in and to the southwest quarter (SW. ¼) of section twenty-seven (27), in township one (1) north, range five (5) west, containing one hundred and sixty (160) acres.

Item 64. It is further ordered, adjudged and decreed that the title of F. W. Wood and George S. Safford, their heirs and assigns, is hereby confirmed in and to the west half of southwest quarter (W. ½ of SW. ¼) of section nine (9), in township one (1) north, range six (6) west, containing eighty (80) acres; also in and to the northwest quarter (NW. ¼) of section fifteen (15), in township one (1) north, range six (6) west, containing one hundred and sixty (160) acres; also in and to the east half of southwest quarter (E. ½ of SW. ¼), of section fifteen (15), in township one (1) north, range six (6) west, containing eighty (80) acres; also in and to the southwest quarter of northeast quarter (SW. ¼ of NE. ¼), northwest quarter of southeast quarter (NW. ¼ of SE. ¼), and northwest quarter (NW. ¼), of section twenty-seven (27), in township one (1) north, range six (6) west, containing two hundred and forty (240) acres.

Item 65. It is further ordered, adjudged and decreed that the title of Jean Louis Sainsevain, his heirs and

assigns, is hereby confirmed in and to the west half (W. ½) of section eleven (11), in township one (1) north, range six (6) west, containing three hundred twenty (320) acres.

Item 66. It is further ordered, adjudged and decreed, that the title of M. Byrne, his heirs and assigns, is hereby confirmed in and to the south half of southeast quarter (S. ½ of SE. ¼) of section thirteen (13), in township one (1) north, range six (6) west, containing eighty (80) acres; also in and to the north half of southeast quarter (N. ½ of SE. ¼) of section thirteen (13), in township one (1) north, range six (6) west, containing eighty (80) acres.

Item 67. It is further ordered, adjudged and decreed that the title of Archibald Martin, his heirs and assigns, is hereby confirmed in and to the southwest quarter (SW. ¼) of section thirteen (13), in township one (1) north, range six (6) west, containing one hundred and sixty (160) acres.

Item 68. It is further ordered, adjudged and decreed that the title of T. Banbury, his heirs and assigns, is hereby confirmed in and to the northeast quarter (NE. ¼) of section fifteen (15), in township one (1) north, range six (6) west, containing one hundred and sixty (160) acres; also in and to the west half of southeast quarter (W. ½ of SE. ¼) of section fifteen (15), in township one (1) north, range six (6) west, containing eighty (80) acres; also in and to the east half of north-east quarter (E. ½ of NE. ¼) and west half of southeast quarter (W. ½ of SE. ¼) of section twenty-three (23), in township one (1) north, range six (6) west, containing one hundred and sixty (160) acres; also in and to the southwest quarter

of northeast quarter (SW. ¼ of NE. ¼), southeast quarter of northwest quarter (SE. ¼ of NW. ¼) and southwest quarter (SW. ¼) of section twenty-three (23), in township one (1) north, range six (6) west, containing two hundred and forty (240) acres; also in and to the east half of southeast quarter (E. ½ of SE. ¼) of section twenty-seven (27), in township one (1) north, range six (6) west, containing eighty (80) acres.

Item 69. It is further ordered, adjudged and decreed that the title of Maria Porter, her heirs and assigns, is hereby confirmed in and to the east half of southeast quarter (E. ½ of SE. ¼) of section fifteen (15), in township one (1) north, range six (6) west, containing eighty (80) acres.

Item 70. It is further ordered, adjudged and decreed that the title of F. W. Wood, George S. Safford and Mrs. I. Pigne Dupuitren, their heirs and assigns, is hereby confirmed in and to the west half of southwest quarter (W. ½ of SW. ¼) of section fifteen (15), in township one (1) north, range six (6) west, containing eighty (80) acres; also in and to the northwest quarter of northeast quarter (NW. ¼ of NE. ¼) of section twenty-seven (27), in township one (1) north, range six (6) west, containing forty (40) acres; also in and to the southwest quarter of southeast quarter (SW. ¼ of SE. ¼) of section twenty-seven (27), in township one (1) north, range six (6) west, containing forty (40) acres.

Item 71. It is further ordered, adjudged and decreed that the title of Thomas J. Hoyt, his heirs and assigns, is hereby confirmed in and to the east half of northeast

quarter (E. ½ of NE. ¼) of section seventeen (17), in township one (1) north, range six (6) west, containing eighty (80) acres.

Item 72. It is further ordered, adjudged and decreed that the title of Henry M. Loud, his heirs and assigns, is hereby confirmed in and to the west half of northwest quarter (W. ½ of NW. ¼) of section twenty-three (23), in township one (1) north, range six (6) west, containing eighty (80) acres.

Item 73. It is further ordered, adjudged and decreed that the title of William Dickey, his heirs and assigns, is hereby confirmed in and to the east half of southeast quarter (E. ½ of SE. ¼) of section twenty-three (23), in township one (1) north, range six (6) west, containing eighty (80) acres; also in and to the west half of southeast quarter (W. ½ of SE. ¼) and south half of southwest quarter (S. ½ of SW. ¼) of section thirty-one (31), in township one (1) north, range six (6) west, containing one hundred and sixty and eighteen hundredths (160.18) acres; also in and to the southeast quarter of southeast quarter (SE. ¼ of SE. ¼) of section thirty-one (31), in township one (1) north, range six (6) west, containing forty (40) acres.

Item 74. It is further ordered, adjudged and decreed that the title of E. H. Forester, his heirs and assigns, is hereby confirmed in and to the northwest quarter of northwest quarter (NW. ¼ of NW. ¼), northeast quarter of northeast quarter (NE. ¼ of NE. ¼), south half of northeast quarter (S. ½ of NE. ¼), south half of northwest quarter (S. ½ of NW. ¼) and south half (S. ½) of

section twenty-five (25), in township one (1) north, range six (6) west, containing five hundred and sixty (560) acres.

Item 75. It is further ordered, adjudged and decreed that the title of Joseph A. Scott, his heirs and assigns, is hereby confirmed in and to the northwest quarter of northeast quarter (NW. ¼ of NE. ¼) and northeast quarter of northwest quarter (NE. ¼ of NW. ¼ of section twenty-five (25), in township one (1) north, range six (6) west, containing eighty (80) acres.

Item 76. It is further ordered, adjudged and decreed that the title of George C. Mesnager and Pierre Darancette, their heirs and assigns, is hereby confirmed in and to the east half of northeast quarter (E. ½ of NE. ¼) of section twenty-seven (27), in township one (1) north, range six (6) west, containing eighty (80) acres.

Item 77. It is further ordered, adjudged and decreed that the title of N. B. Bradley and H. M. Loud, their heirs and assigns, is hereby confirmed in and to the east half of southwest quarter (E. ½ of S. W. ¼) of section twenty-seven (27), in township one (1) north, range six (6) west, containing eighty (80) acres; also in and to the northeast quarter (N. E. ¼) of section thirty-five (35), in township one (1) north, range six (6) west, containing one hundred and sixty (160) acres; also in and to the southeast quarter (S. E. ¼) of section thirty-five (35), in township one (1) north, range six (6) west, containing one hundred and sixty (160) acres.

Item 78. It is further ordered, adjudged and decreed that the title of R. W. Poindexter, his heirs and assigns, is hereby confirmed in and to the west half of southwest quarter (W. ½ of S. W. ¼) of section twenty-seven (27), in township one (1) north, range six (6) west, containing eighty (80) acres.

Item 79. It is further ordered, adjudged and decreed that the title of W. H. Carlson, his heirs and assigns, is hereby confirmed in and to the west half (W. ½) of section twenty-nine (29), in township one (1) north, range six (6) west, containing three hundred and twenty (320) acres.

Item 80. It is further ordered, adjudged and decreed that the title of George Chaffey, his heirs and assigns, is hereby confirmed in and to the east half of southeast quarter (E. ½ of S. E. ¼) of section twenty-nine (29), in township one (1) north, range six (6) west, containing eighty (80) acres.

Item 81. It is further ordered, adjudged and decreed that the title of Thomas Thomsen, his heirs and assigns, is hereby confirmed in and to the west half of southeast quarter (W. ½ of S. E. ¼) of section twenty-nine (29), in township one (1) north, range six (6) west, containing eighty (80) acres.

Item 82. It is further ordered, adjudged and decreed that the title of Leslie T. Smith, his heirs and assigns, is hereby confirmed in and to the east half of northeast quarter (E. ½ of N. E. ¼) of section thirty-one (31), in township one (1) north, range six (6) west, containing eighty (80) acres.

Item 83. It is further ordered, adjudged and decreed, that the title of John S. Maltman, his heirs and assigns, is hereby confirmed in and to the north half of southwest quarter (N. ½ of S. W. ¼) and west half of northeast quarter (W. ½ of N. E. ¼) of section thirty-one (31), in township one (1) north, range six (6) west, containing one hundred and sixty and fifty-five hundredths (160.55) acres.

Item 84. It is further ordered, adjudged and decreed, that the title of Charles R. Long and Thomas Thomsen, their heirs and assigns, is hereby confirmed in and to the fractional northwest quarter (N. W. ¼) of section thirty-one (31), in township one (1) north, range six (6) west, containing one hundred and sixty-two and nineteen hundredths (162.19) acres.

Item 85. It is further ordered, adjudged and decreed, that the title of Robert A. Guthrie, his heirs and assigns, is hereby confirmed in and to the northeast quarter of southeast quarter (N. E. ¼ of S. E. ¼) of section thirty-one (31), in township one (1) north, range six (6) west, containing forty (40) acres.

Item 86. It is further ordered, adjudged and decreed, that the title of M. E. Wood, his heirs and assigns, is hereby confirmed in and to the northwest quarter (N. W. ¼) of section thirty-five (35), in township one (1) north, range six (6) west, containing one hundred and sixty (160) acres.

Item 87. It is further ordered, adjudged and decreed, that the title of S. K. McIlhenny, his heirs and assigns, is hereby confirmed in and to the southwest quarter (S.

W. ¼) of section thirty-five (35), in township one (1) north, range six (6) west, containing one hundred and sixty (160) acres.

Item 88. It is further ordered, adjudged and decreed, that the title of J. C. Sommer, his heirs and assigns, is hereby confirmed in and to lots one (1) and two (2) of section twenty-one (21), in township one (1) north, range seven (7) west, containing sixty-eight and twenty-eight hundredths (68.28) acres.

Item 89. It is further ordered, adjudged and decreed, that the title of H. E. Sontag, his heirs and assigns, is hereby confirmed in and to lots three (3) and (4) of section twenty-one (21), in township one (1) north, range seven (7) west, containing sixty-eight and twenty-eight hundredths (68.28) acres.

Item 90. It is further ordered, adjudged and decreed, that the title of I. W. Hellman and O. W. Childs, their heirs and assigns, is hereby confirmed in and to the fractional east half (E. ½) of section twenty-seven (27), in township one (1) north, range seven (7) west, containing one hundred and seventy-three and forty-eight hundredths (173.48) acres.

Item 91. It is further ordered, adjudged and decreed, that the title of A. O. Porter, his heirs, successors and assigns, is hereby confirmed in and to the northwest quarter of northeast quarter (N. W. ¼ of N. E. ¼), east half of northeast quarter (E. ½ of N. E. ¼), southeast quarter of southeast quarter (S. E. ¼ of S. E. ¼), and lots one (1), two (2), three (3) and four (4) of section thirty-five (35), in township one (1) north, range seven (7)

west, containing one hundred and sixty-five and eighty-eight hundredths (165.88) acres.

Item 92. It is further ordered, adjudged and decreed that the title of Albert A. Dexter, Jr., his heirs and assigns, is hereby confirmed in and to the northeast quarter of northwest quarter (N. E. ¼ of N. W. ¼) of section thirteen (13), in township one (1) north, range eight (8) west, containing forty (40) acres.

Item 93. It is further ordered, adjudged and decreed that the title of W. R. Wiggins, his heirs and assigns, is hereby confirmed in and to the southeast quarter of northwest quarter (S. E. ¼ of N. W. ¼) of section thirteen (13), in township one (1) north, range eight (8) west, containing forty (40) acres; also in and to the southwest quarter of northwest quarter (S. W. ¼ of N. W. ¼) of section thirteen (13), in township one (1) north, range eight (8) west, containing forty (40) acres.

Item 94. It is further ordered, adjudged and decreed that the title of L. L. Bradbury, his heirs and assigns, is hereby confirmed in and to the southeast quarter (S. E. ¼) of section nineteen (19), in township one (1) north, range eight (8) west, containing one hundred and sixty (160) acres.

Item 95. It is further ordered, adjudged and decreed that the title of J. L. Howland, his heirs and assigns, is hereby confirmed in and to the east half of southwest quarter (E. ½ of S. W. ¼) and southeast quarter (S. E. ¼) of section twenty-one (21), in township one (1) north, range eight (8) west, containing two hundred and forty (240) acres.

Item 96. It is further ordered, adjudged and decreed that the title of H. Hiller, his heirs and assigns, is hereby confirmed in and to the southwest quarter of southwest quarter (S. W. ¼ of S. W. ¼) of section twenty-one (21), in township one (1) north, range eight (8) west, containing forty (40) acres.

Item 97. It is further ordered, adjudged and decreed that the title of Henry W. Colegrove, his heirs and assigns, is hereby confiirmed in and to the northwest quarter of southwest quarter (N. W. ¼ of S. W. ¼) of section twenty-one (21), in township one (1) north, range eight (8) west, containing forty (40) acres.

Item 98. It is further ordered, adjudged and decreed that the title of C. Elliott and M. Kelleher, their heirs and assigns, is hereby confirmed in and to the west half of northeast quarter (W. ½ of N. E. ¼) of section twenty-three (23), in township one (1) north, range eight (8) west, containing eighty (80) acres.

Item 99. It is further ordered, adjudged and decreed that the title of Edward Every, his heirs and assigns, is hereby confirmed in and to the east half of northeast quarter (E. ½ of N. E. ¼) of section twenty-three (23), in township one (1) north, range eight (8) west, containing eighty (80 acres.

Item 100. It is further ordered, adjudged and decreed that the title of W. J. Bodenhammer, his heirs and assigns, is hereby confirmed in and to lots one (1), two (2) and three (3), of section twenty-five (25), in township one (1) north, range eight (8) west, containing sixty-seven and fifty-one hundredths (67.51) acres.

Item 101. It is further ordered, adjudged and decreed, that the title of William Thorpe, his heirs and assigns, is hereby confirmed in and to the south half of southwest quarter (S. ½ of S. W. ¼) of section fifteen (15), in township one (1) north, range nine (9) west, containing eighty (80) acres.

Item 102. It is further ordered, adjudged and decreed that the title of Evan Harer, his heirs and assigns, is hereby confirmed in and to the south half of southeast (S. ½ of S. E. ¼) of section nineteen (19), in township one (1) north, range nine (9) west, containing eighty (80) acres.

Item 103. It is further ordered, adjudged and decreed, that the title of J. C. West and J. J. West, their heirs and assigns,is hereby confirmed in and to the north half of southeast quarter (N. ½ of S. E. ¼) and southwest quarter (S. W. ¼) of section twenty-one (21), in township one (1) north, range nine (9) west, containing two hundred and forty (240) acres.

Item 104. It is further ordered, adjudged and decreed that the title of Charles A. H. de Szigethy, his heirs and assigns, is hereby confirmed in and to the south half of southeast quarter (S. ½ of S. E. ¼) of section twenty-one (21), in township one (1) north, range nine (9) west, containing eighty (80) acres.

Item 105. It is further ordered, adjudged and decreed, that the title of W. H. Bowman, his heirs and assigns, is hereby confirmed in and to the southwest quarter of southwest quarter (S. W. ¼ of S. W. ¼) of section fifteen (15), in township one (1) north, range ten (10) west, containing forty (40) acres.

Item 106. It is further ordered, adjudged and decreed that the title of F. A. Bliss and W. W. Bliss, their heirs and assigns, is hereby confirmed in and to the east half of northeast quarter (E. ½ of N. E. ¼) and fractional southeast quarter (Fr'l S. E. ¼) of section nineteen (19), in township one (1) north, range ten (10) west, containing one hundred and eighty-nine and forty- three hundredths (189.43) acres.

Item 107. It is further ordered, adjudged and decreed that the title of Nelson Van Tassel, his heirs and assigns, is hereby confirmed in and to the northeast quarter of southwest quarter (N. E. ¼ of S. W. ¼) and lot three(3) of section twenty-one (21), in township one (1) north, range ten (10) west, containing seventy-five and fifty-five hundredths (75.55) acres.

Item 108. It is further ordered, adjudged and decreed that the title of Philip Shorey, his heirs and assigns is hereby confirmed in and to the north half of northeast quarter (N. ½ of N. E. ¼) of section twenty-five (25), in township one (1) north, range ten (10) west, containing eighty (80) acres.

Item 109. It is further ordered, adjudged and decreed that the title of J. S. Vosburg and William Gardner Cogswell, their heirs and assigns, is hereby confirmed in and to the east half of southwest quarter (E ½ of S. W. ¼), southeast quarter (S. E. ¼) and lot two (2) of section seven (7), in township one (1) north, range eleven (11) west, containing two hundred and eighty-three and seventy-five hundredths (283.75) acres.

Item 110. It is further ordered, adjudged and decreed

that the title of Sarah Ann Brown, her heirs and assigns, is hereby confirmed in and to the northwest quarter of northwest quarter (N. W. ¼ of N. W. ¼) of section thirteen (13), in township one (1) north, range eleven (11) west, containing forty (40) acres.

Item 111. It is further ordered, adjudged and decreed that the title of William D. Smith, his heirs and assigns, is hereby confirmed in and to the east half of southwest quarter (E. ½ of S. W. ¼) of section thirteen (13), in township one (1) north, range eleven (11) west, containing eighty (80) acres.

Item 112. It is further ordered, adjudged and decreed that the title of N. C. Carter, his heirs and assigns, is hereby confirmed in and to the south half of northeast quarter (S. ½ of N. E. ¼) of section seventeen (17), in township one (1) north, range eleven (11) west, containing eighty (80) acres; also in and to the southeast quarter of northwest quarter (S. E. ¼ of N. W. ¼) of section seventeen (17), in township one (1) north, range eleven (11) west, containing forty (40) acres.

Item 113. It is further ordered, adjudged and decreed that the title of Nathaniel C. Carter, his heirs and assigns, is hereby confirmed in and to the north half of southeast quarter (N. ½ of S. E. ¼) and lots three (3) and four (4) of section seventeen (17), in township one (1) north, range eleven (11) west, containing one hundred and eight and seventy-seven hundredths (108.77) acres.

Item 114. It is further ordered, adjudged and decreed that the title of W. N. Monroe, his heirs and assigns, is hereby confirmed in and to the northwest quarter of north-

east quarter (N. W. ¼ of N. E. ¼) and lots three (3) and four (4) of section twenty-three (23), in township one (1) north, range eleven (11) west, containing one hundred and three and forty-nine hundredths (103.49) acres.

Item 115. It is further ordered, adjudged and decreed that the title of Charles Mueller, his heirs and assigns, is hereby confirmed in and to the southwest quarter of northwest quarter (S. W. ¼ of N. W. ¼) and lot one (1) of section twenty-three (23), in township one (1) north, range eleven (11) west, containing fifty-eight and sixty-two hundredths (58.62) acres.

Item 116. It is further ordered, adjudged and decreed that the title of Luther Hall, his heirs and assigns, is hereby confirmed in and to lot one (1) and two (2) of northeast quarter (N. E. ¼) of section three (3), in township one (1) north, range twelve (12) west, containing eighty (80) acres.

Item 117. It is further ordered, adjudged and decreed that the title of R. J. Forsyth, his heirs and assigns, is hereby confirmed in and to lot three (3) of the northwest quarter (lot three of N. W. ¼) of section three (3), in township one (1) north, range twelve (12) west, containing thirty-nine and eighty-eight hundredths (39.88) acres.

Item 118. It is further ordered, adjudged and decreed that the title of W. F. P. Noble, his heirs and assigns, is hereby confirmed in and to lot four of northwest quarter (lot 4 of N. W. ¼) of section three (3), in township one (1) north, range twelve (12) west, containing forty and twenty-four hundredths (40.24) acres.

Item 119. It is further ordered, adjudged and decreed that the title of John McCann, his heirs and assigns, is

hereby confirmed in and to lots five (5) of section three (3), in township one (1) north, range twelve (12) west, containing twenty and sixteen hundredths (20.16) acres.

Item 120. It is further ordered, adjudged and decreed, that the title of F. J. Woodbury and J. P. Woodbury, their heirs and assigns, is hereby confirmed in and to the northeast quarter of southeast quarter (N. E. ¼ of S. E. ¼) of section three (3), in township one (1) north, range twelve (12) west, containing forty (40) acres.

Item 121. It is further ordered, adjudged and decreed that the title of Levi W. Giddings, his heirs and assigns, is hereby confirmed in and to lots one (1), eight (8) and nine (9) of section five (5), in township one (1) north, range twelve (12) west, containing seventy-six and twenty hundredths (76.20) acres; also in and to lot two (2) of section five (5), in township one (1) north, range twelve (12) west, containing forty (40) acres.

Item 122. It is further ordered, adjudged and decreed that the title of Henry G. Monks, his heirs and assigns, is hereby confirmed in and to lots three (3), four (4), five (5), six (6) and seven (7) of section five (5), in township one (1) north, range twelve (12) west, containing one hundred and forty-eight and twenty-eight hundredths (148.28) acres

Item 123. It is further ordered, adjudged and decreed that the title of William Allen, his heirs and assigns, is hereby confirmed in and to lots one (1) and two (2) of section eleven (11), in township one (1) north, range twelve (12) west, containing thirty-six and sixty-five hundredths (36.65) acres.

Item 124. It is further ordered, adjudged and decreed that the title of William Allen, Mary Agnes Crank, Albert Brigden and James Craig, their heirs and assigns, is hereby confirmed in and to lots three (3), four (4) and five (5), of section eleven (11), in township one (1) north, range twelve (12) west, containing ninety-five and ten hundredths (95.10) acres.

Item 125. It is further ordered, adjudged and decreed that the title of Job C. Davis, his heirs and assigns, is hereby confirmed in and to lot four (4), of section thirteen (13), in township one (1) north, range twelve (12) west, containing twenty-three and six hundredths (23.06) acres.

Item 126. It is further ordered, adjudged and decreed that the title of Samuel Chapman, Jr., his heirs and assigns, is hereby confirmed in and to lots one (1) and two (2), of section thirteen (13), in township one (1) north, range twelve (12) west, containing forty-seven and twenty hundredths (47.20) acres.

Item 127. It is further ordered, adjudged and decreed that the title of Heinrich Martin Fischer, his heirs and assigns, is hereby confirmed in and to lots one (1) two (2) and three (3), of section three (3), in township one (1) north, range fourteen (14) west, containing ninety-nine and seventy-seven hundredths (97.77) acres.

Item 128. It is further ordered, adjudged and decreed that the title of Henry Martz, his heirs and assigns, is hereby confirmed in and to the southeast quarter of northwest quarter (SE. ¼ of NW. ¼) southwest quarter of northeast quarter (SW. ¼ of NE. ¼), and northeast quar-

ter of southwest quarter (NE. ¼ of SW. ¼) of section three (3), in township one (1) north, range fourteen (14) west, containing one hundred and twenty (120) acres.

Item 129. It is further ordered, adjudged and decreed, that the title of E. W. Lewis, his heirs and assigns, is hereby confirmed in and to the southwest quarter of northwest quarter (SW. ¼ of NW. ¼), and lots four (4) and five (5) of section three (3), in township one (1) north, range fourteen (14) west, containing one hundred and twenty (120) acres.

Item 130. It is further ordered, adjudged and decreed that the title of Charles J. Fox, his heirs and assigns, is hereby confirmed in and to the southeast quarter (SE. ¼) of section three (3), in township one (1) north, range fourteen (14) west, containing one hundred and sixty (160) acres.

Item 131. It is further ordered, adjudged and decreed that the title of Andrew M. Smith, his heirs and assigns, is hereby confirmed in and to the west half of southwest quarter (W. ½ of SW. ¼) and southeast quarter of southwest quarter (SE. ¼ of SW. ¼) of section three (3), in township one (1) north, range fourteen (14) west, containing one hundred and twenty (120) acres.

Item 132. It is further ordered, adjudged and decreed that the title of J. Wallen Smith, his heirs and assigns, is hereby confirmed in and to lots one (1) and two (2) of section five (5), in township one (1) north, range fourteen (14) west, containing seven and thirty hundredths (7.39) acres.

Item 133. It is further ordered, adjudged and de-

creed that the title of Edwin Smith, his heirs and assigns, is hereby confirmed in and to the fractional north half (N. ½) of section nine (9), in township one (1) north, range fourteen (14) west, containing two hundred and *eighty-two and twenty-two* hundredths (282.22) acres; also in and to the fractional south half (S. ½) of section nine (9), in township one (1) north, range fourteen (14) west, containing two hundred and sixty and two hundredths (260.02) acres; also in and to lot one (1) of section fifteen (15), in township one (1) north, range fourteen (14) west, containing two and ninety-two hundredths (2.92) acres.

Item 134. It is further ordered, adjudged and decreed that the title of Simon White, his heirs and assigns, is hereby confirmed in and to the west half of northwest quarter (W ½ of NW. ¼) and lots one (1), two (2), three (3) and four (4) of section eleven (11), in township one (1) north, range fourteen (14) west, containing one hundred and thirty-four and twenty-four hundredths (134.24) acres.

Item 135. It is further ordered, adjudged and decreed that the title of Elijah H. Workman, his heirs and assigns, is hereby confirmed in and to lots one (1), two (2), three (3) and four (4) of section twenty-seven (27), in township one (1) north, range fourteen (14) west, containing seventy-eight and forty-nine hundredths (78.49) acres.

Item 136. It is further ordered, adjudged and decreed that the title of A. Rosecrans, his heirs and assigns, is hereby confirmed in and to the fractional south-

west quarter (SW. ¼) of section thirty-one (31), in township one (1) north, range fourteen (14) west, containing one hundred and sixty-two and forty hundredths (162.40) acres.

Item 137. It is further ordered, adjudged and decreed that the title of Presentacion B. de Haley, his heirs and assigns, is hereby confirmed in and to the fractional southeast quarter (SE. ¼) of section thirty-one (31), in township one (1) north, range fourteen (14) west, containing one hundred and fifty-four (154) acres.

Item 138. It is further ordered, adjudged and decreed that the title of B. Ballerino, his heirs and assigns, is hereby confirmed in and to the south half of southwest quarter (S. ½ of SW. ¼) and lots one (1) and two (2) of section thirty-three (33), in township one (1) north, range fourteen (14) west, containing one hundred and twenty-eight and eighty hundredths (128.80) acres.

Item 139. It is further ordered, adjudged and decreed that the title of Mrs. Julia E. Lord, her heirs and assigns, is hereby confirmed in and to the east half (E. ½) of section thirty-five (35), in township one (1) north, range fourteen (14) west, containing three hundred and twenty (320) acres.

Item 140. It is further ordered, adjudged and decreed that the title of S. A. Guiberson, his heirs and assigns, is hereby confirmed in and to the northwest quarter (NW. ¼) of section three (3), in township three (3) north, range nineteen (19) west, containing one hundred and sixty (160) acres.

Item 141. It is further ordered, adjudged and decreed that the title of Alexander Phillips, his heirs and assigns, is hereby confirmed in and to the east half of northeast quarter (E. ½ of NE. ¼) of section five (5), in township three (3) north, range nineteen (19) west, containing seventy-nine and ninety-five hundredths (79.95) acres.

Item 142. It is further ordered, adjudged and decreed that the title of John Cawelti, his heirs and assigns, is hereby confirmed in and to the north half of southeast quarter (N. ½ of SE. ¼), southwest quarter (SW. ¼), and north half (N. ½) of section fifteen (15), in township four (4) north, range nineteen (19) west, containing five hundred and sixty (560) acres.

Item 143. It is further ordered, adjudged and decreed, that the title of J. A. Conaway, his heirs and assigns, is hereby confirmed in and to the south half of southeast quarter (S. ½ of SE. ¼) of section fifteen (15), in township four (4) north, range nineteen (19) west, containing eighty (80) acres; also in and to the northwest quarter (NW. ¼) of section twenty-three (23), in township four (4) north, range nineteen (19) west, containing one hundred and sixty (160) acres, also in and to the northeast quarter (NE. ¼) of section twenty-seven (27), in township four (4) north, range nineteen (19) west, containing one hundred and sixty (160) acres.

Item 144. It is further ordered, adjudged and decreed that the title of Thomas F. Arundell, his heirs and assigns, is hereby confirmed in and to the east half of northeast quarter (E. ½ of NE. ¼) and east half of south-

east quarter (E. ¼ of SE. ¼) of section seventeen (17), in township four (4) north, range nineteen (19) west, containing one hundred and sixty (160)) acres.

Item 145. It is further ordered, adjudged and decreed that the title of Thomas Rhodes, his heirs and assigns is hereby confirmed in and to the north half (N.½) and southwest quarter (SW. ¼) of section twenty-one (21), in township four (4) north, range nineteen (19) west, containing four hundred and eighty (480) acres.

Item 146. It is further ordered, adjudged and decreed that the title of N. A. M. Kellogg, his heirs and assigns, is hereby confirmed in and to the southeast quarter (SE. ¼) of section twenty-one (21), in township four (4) north, range nineteen (19) west, containing one hundred and sixty (160) acres; also in and to the east half of northeast quarter (E. ½ of NE. ¼) and northeast quarter of southeast quarter (NE. ¼ of SE. ¼) of section twenty-nine (29), in township four (4) north, range nineteen (19) west, containing one hundred and twenty (120) acres.

Item 147. It is further ordered, adjudged and decreed that the title of C. C. Riley, his heirs and assigns, is hereby confirmed in and to the southwest quarter (SW. ¼) of section twenty-three (23), in township four (4) north, range nineteen (19) west, containing one hundred and sixty (160) acres.

Item 148. It is further ordered, adjudged and decreed that the title of Rush J. Ealy, his heirs and assigns, is hereby confirmed in and to the southeast quarter of northwest quarter (SE. ¼ of NW. ¼) of section

twenty-seven (27), in township four (4) north, range nineteen (19) west, containing forty (40) acres.

Subdivision III.

The court finds and determines that all the lands described in this subdivision III, are within the limits of the grant made unto the Atlantic and Pacific Railroad Company by act of Congress approved on July 27th, 1866, as established by the map of definite location filed by that company in the general land office during the year 1872, which grant was forfeited unto the United States by act of Congress approved on July 6th, 1886; that none of the said lands are situated within the limits, primary or indemnity, of the grant made unto the Southern Pacific Railroad Company by section 18 of the said act of Congress of July 27th, 1866; that in former litigations between the United States and the said Southern Pacific Railroad Company, it was finally and conclusively adjudged and determined, as between the United States and any claim to said lands by said company, by virtue of the act of Congress of March 3d, 1871, that such lands became, upon the passage of the forfeiture act of July 6th, 1886, the property of the United States, and by force of that act, were restored to the public domain without the Southern Pacific Railroad Company having acquired any interest therein, that affected the power of the United States to forfeit and restore them to the public domain; that all of the said lands have been erroneously patented by the United States unto the said Southern Pacific Railroad Company; that the said Southern Pacific Railroad Com-

pany sold all of the lands to bona fide purchasers thereof, at the prices set forth in the several items of this subdivision III, each of such sales being for a price less than one dollar and twenty-five cents per acre; and that the defendant Southern Pacific Railroad Company is indebted to the United States for the several sums of money received from the said purchasers, as in the items of this subdivision III set forth.

Item 1. It is therefore ordered, adjudged and decreed that the title of Catalina Batz, her heirs and assigns, is hereby confirmed in and to the northeast quarter of southeast quarter (NE. ¼ of SE. ¼) of section seventeen (17), township one (1) south, range twelve (12) west, containing forty (40) acres; the said Catalina Batz having paid the defendant Southern Pacific Railroad Company the sum of one dollar for the said land, in full payment.

Item 2. It is further ordered, adjudged and decreed, that the title of Wm. Lacy, his heirs and assigns, is hereby confirmed in and to the northeast quarter of northeast quarter (NE. ¼ of NE. ¼) and lot four (4) of section twenty-one (21), township one (1) north, range ten (10) west, containing seventy-nine and eighty-nine hundredths (79.89) acres, upon payment unto the United States of the sum of four dollars and two cents ($4.02); the said Wm. Lacy having paid the defendant Southern Pacific Railroad Company, as a partial payment, the sum of ninety-five dollars and eighty-four cents ($95.84) for principal and interest on account of the agreed purchase price of the said land.

Item 3. It is further ordered, adjudged and decreed, that the title of B. Ballerino, his heirs and assigns, is hereby confirmed in and to the south half of southeast quarter (S. ½ of SE. ¼) and lots three (3) and four (4) of section thirty-three (33), township one (1) north, range fourteen (14) west, containing one hundred and twenty and forty hundredths (120.40) acres, upon payment unto the United States of the sum of twenty-seven dollars and twenty-one cents ($27.21); the said B. Ballerino having paid the defendant Southern Pacific Railroad Company, as a partial payment, the sum of one hundred and twenty-three dollars and twenty-nine cents ($123.29), for principal and interest on account of the agreed purchase price of said land.

Item 4. It is further ordered, adjudged and decreed, that the title of Rush J. Ealy, his heirs and assigns, is hereby confirmed in and to the northeast quarter of northwest quarter (NE. ¼ of NW. ¼) and west half of northwest quarter (W. ½ of NW. ¼) of section twenty-seven (27), in township four (4) north, range nineteen (19) west, containing one hundred and twenty (120) acres, upon payment unto the United States of the sum of six dollars ($6.00); the said Rush J. Ealy having paid the defendant Southern Pacific Railroad Company as a partial payment, the sum of one hundred and forty-four dollars ($144.00) for principal and interest on account of the agreed purchase price of the said land.

Item 5. It is further ordered, adjudged and decreed, that the title of S. A. Guiberson, his heirs and assigns, is hereby confirmed in and to the southeast quarter of

northeast quarter (SE. ¼ of NE. ¼) of section thirty-three (33), township four (4) north, range nineteen (19) west, containing forty (40) acres; the said S. A. Guiberson having paid the defendant Southern Pacific Railroad Company the sum of forty dollars ($40.00), full purchase price of the said land.

Subdivision IV.

The court finds and determines that all the lands described in this subdivision IV, are within the granted or twenty-mile limits of the grant made unto the Atlantic and Pacific Railroad Company by act of Congress approved on July 27th, 1866, as established by the map of definite location filed by that company in the general land office during the year 1872, which grant was forfeited unto the United States by act of Congress approved on July 6th, 1886; that all of the said lands are also situated within the indemnity limits of the grant made unto the said Southern Pacific Railroad Company by section 18 of the said act of Congress of July 27th, 1866, and within the primary or granted limits of the grant made unto the said Southern Pacific Railroad Company by the said act of Congress of March 3d, 1871; that in former litigations between the United States and the Southern Pacific Railroad Company, it was finally and conclusively adjudged and determined, as between the United States and any claim to said lands by said company by virtue of the act of Congress of March 3d, 1871, that such lands became upon the passage of the forfeiture act of July 6th, 1886, the property of the United States, and by force of that act were restored to

the public domain, without the Southern Pacific Railroad Company having acquired any interest therein, that affected the power of the United States to forfeit and restore them to the public domain; that on January 9th, 1885, at a time when the title to said lands was vested in the Atlantic and Pacific Railroad Company as a part of its said land grant, the said lands were erroneously patented unto the defendant Southern Pacific Railroad Company as enuring to it under its said grant of March 3d, 1871; that the defendant Southern Pacific Railroad Company sold all of the said lands unto bona fide purchasers thereof, at purchase prices paid, in each instance, equal to or in excess of one dollar and twenty-five cents ($1.25) per acre; that the title of each of such purchasers to the lands of their respective purchases, as set forth in the several items of this subdivision IV, was confirmed unto such purchasers by acts of Congress approved on March 3d, 1887, and March 2d, 1896; and that the defendant Southern Pacific Railroad Company is indebted unto the United States for all of the said land so sold, at the rate of one dollar and twenty-five cents ($1.25) per acre, with interest at six (6) per cent per annum from and after the date of this decree.

Item 1. It is therefore ordered, adjudged and decreed that the title of the Fairmont Land and Water Company, its successors and assigns, is hereby confirmed in and to all of section 1, township seven (7) north, range fifteen (15) west, containing six hundred and forty (640) acres; also in and to the north half (N. ½) of section three (3), township seven (7) north, range fifteen

(15) west, containing three hundred and twenty (320) acres; also in and to the northwest quarter (NW. ¼) and lot two (2) of section five (5), township seven (7) north, range fifteen (15) west, containing two hundred and forty (240) acres.

Item 2. It is further ordered, adjudged and decreed that the title of M. L. Wicks, his heirs and assigns, is hereby confirmed in and to the north half (N. ½) of section seven (7), township seven (7) north, range fourteen (14) west, containing three hundred and nineteen and sixty hundredths (319.60) acres.

Item 3. It is further ordered, adjudged and decreed that the title of Mrs. C. L. True, her heirs and assigns, is hereby confirmed in and to the north half (N. ½) of section nine (9), township seven (7) north, range fourteen (14) west, containing three hundred and twenty (320) acres.

Item 4. It is further ordered, adjudged and decreed that the title of W. R. Hughes, his heirs and assigns, is hereby confirmed in and to the north half (N. ½) of section eleven (11), township seven (7) north, range fourteen (14) west, containing three hundred and twenty (320) acres.

Subdivision V.

The court further finds and determines that the lands hereinafter in this subdivision V described, are situated within the indemnity limits of the grant to the Atlantic and Pacific Railroad Company of July 27th, 1866, as established by its map of definite location filed in the year 1872, and which were forfeited to the United States by the act of Congress of July 6th, 1886, and said lands

are also situated within the primary or granted limits of the grant to the Southern Pacific Railroad Company of March 3rd, 1871, and said lands are also situated within the indemnity limits of the grant to the Southern Pacific Railroad Company of July 27th, 1866; that in former litigations between the United States and the Southern Pacific Company, it was finally and conclusively adjudged and determined as between the United States and any claim to said lands by said company by virtue of the act of Congress of March 3d, 1871, that such lands became, upon the passage of the forfeiture act of July 6th, 1883, the property of the United States, and by force of that act were restored to the public domain, without the Southern Pacific Railroad Company having acquired any interest therein, that affected the power of the United States to forfeit and restore them to the public domain.

That on January 9th, 1885, patents were issued by the United States purporting to convey said lands to the Southern Pacific Railroad Company, as enuring to it under its said grant of March 3d, 1871, and that said Southern Pacific Railroad Company has sold said lands to bona fide purchasers, and that the title of such purchasers has been confirmed by the act of Congress of March 2d, 1896. That the lands in the conflicting limits of the grant. to the Atlantic and Pacific Railroad Company and to the Southern Pacific Railroad Company, made by the act of Congress of July 27th, 1866, are in process of being partitioned and said grants are in pro-

cess of adjustment and settlement in the Department of the Interior. (See 183 U. S. 519, 534, 535.)

Item 1. It is therefore ordered, adjudged and decreed, that the bill of complaint for the said lands and for the value thereof, be and hereby is dismissed without prejudice to any further suit or action against the defendant Southern Pacific Railroad Company, D. O. Mills and Homer S. King, as trustees, and Central Trust Company as trustee, as to all of fractional section one (1), all of fractional section three (3), and all of fractional section five (5), in township seven (7) north, range fourteen (14) west.

Item 2. It is further ordered, adjudged and decreed, that the title of Mary H. Hughes, her heirs and assigns, is hereby confirmed in and to all of fractional section one (1), township seven (7) north, range fourteen (14) west, containing six hundred and thirty-six and eighty-six hundredths (636.86) acres.

Item 3. It is further ordered, adjudged and decreed, that the title of Jennie L. Wicks, successor in interest of M. L. Wicks, her heirs and assigns, is hereby confirmed in and to all of fractional section three (3), township seven (7) north, range fourteen (14) west, containing six hundred and thirty-one and twenty hundredths (631.20) acres.

Item 4. It is further ordered, adjudged and decreed, that the title of Fairmount Land and Water Company, successor in interest of M. L. Wicks, its successors and assigns, is hereby confirmed in and to all of fractional section five (5), township seven (7) north, range four-

teen (14) west, containing six hudred and twenty-eight and seventy-four hundredths (628.74) acres.

Subdivision VI.

The court finds and determines that the following described lands are covered by patents issued by the United States otherwise than under or by virtue of any land grant made unto the Southern Pacific Railroad Company—and as to such lands it is ordered, adjudged and decreed that the bill of complainant herein is hereby dismissed without prejudice, to wit: All of fractional section fifteen (15), in township one (1) north, range fifteen (15) west, the northwest quarter of northwest quarter (NW. ¼ of NW. ¼) of section twenty-five (25), in township four (4) north, range nineteen (19) west, the northwest quarter of southeast quarter (NW. ¼ of SE. ¼), east half of southwest quarter (E. ½ of SW. ¼), and southwest quarter of southwest quarter (SW. ¼ of SW. ¼) of section twenty-five (25), in township four (4) north, range nineteen (19) west; the east half of southeast quarter (E. ½ of SE. ¼) of section twenty-five (25), in township four (4) north, range nineteen (19) west; and the east half of southeast quarter (E. ½ of SE. ¼) of section thirty-three (33), in township four (4) north, range nineteen (19) west.

Subdivision VII.

It is further ordered, adjudged and decreed that the defendants, Southern Pacific Railroad Company, Homer S. King as trustee, and Central Trust Company as trustee, have no title, estate or interest in lots two (2), three (3) and four (4), of section thirty-three (33), in township four (4) north, range ninteen (19) west.

Subdivision VIII.

The court finds and determines that the defendant Southern Pacific Railroad Company is indebted to the United States in the sum of thirty-three thousand one hundred and ninety-two dollars and seventy-nine cents ($33,192.79) for twenty-six thousand five hundred and fifty-four and twenty-three hundredths (26,554.23) acres of land at one dollar and twenty-five cents ($1.25) per acre, erroneously patented by the United States unto the said company and by it sold to bona fide purchasers from whom it has received in payment therefore, in each instance, a sum equal to or in excess of one dollar and twenty-five cents ($1.25) per acre; together with the sum of four hundred and four dollars and thirteen cents ($404.13), received by the said company from the land sales made at lessthan one dollar and twenty-five cents ($1.25) per acre, set forth in subdivisions III and IV hereof; in all the sum of thirty-three thousand five hundred and ninety-six dollars and ninety-two cents ($33,596.92).

It is therefore ordered, adjudged and decreed that the United States have and recover of an from the defendant Southern Pacific Railroad Company, the sum of thirty-three thousand five hundred and ninety-six dollars and ninety-two cents ($33,596.92), with interest thereon at the rate of six (6) per cent per annum from the date of this decree, together with its reasonable costs herein taxed at two hundred twenty-four 90/100 (224.90) dol-

lars; and that execution issue against said Southern Pacific Railroad Company for said sums.

ROSS,
Circuit Judge.

Decree entered and recorded December 15th, 1902.

WM. M. VAN DYKE,
Clerk.

By Chas. N. Williams,
Deputy Clerk.

[Endorsed]: Original. No. 878. In the Circuit Court of the United States, Ninth Circuit Southern District of California. United States, Complainant, vs. Southern Pacific Railroad Co., et al., Defendants. Decree. Filed Dec. 15, 1902. Wm. M. Van Dyke, Clerk. Chas. N. Williams, Deputy. J. H. Call, Special U. S. Attorney.

Whereupon said bill of complaint, amendment to bill of complaint, subpoena, duplicate subpoena, answer of defendant Alice V. Slosson, answer of defendants Southern Pacific Railroad Company, et al., copy of order that defendant The Central Trust Company of New York appear and plead, replication to the answer of So. Pac. R. R. Co. et al., copy of order that answer of defendants Southern Pacific Railroad Company and others, stand for and be deemed the answer of defendant Central Trust Company of New York, answer of defendants San Francisco Savings Union (a corporation), et al., answer of defendant Mary J. Mackay, answer of defendant Geo. C. Hagar, copy of order allowing Mary Phillips to become a party and to file answer, answer of defendant Mary Phillips, copy of order amending bill of complaint and said final

decree are hereto annexed, said final decree being duly signed, filed and enrolled pursuant to the practice of said Circuit Court.

Attest, etc.

[Seal] WM. M. VAN DYKE,
Clerk.
By Chas. N. Williams,
Deputy Clerk.

[Endorsed]: No. 878. In the Circuit Court of the United States, Ninth Judicial Circuit, for the Southern District of California. United States vs. Southern Pacific Railroad Company, et al. Enrolled Papers. Filed December 15th, 1902. Wm. M. Van Dyke, Clerk. By Chas. N. Williams, Deputy Clerk. Recorded Decree Register, Book No. 3, page 17.

In the Circuit Court of the United States, Ninth Circuit, Southern District of California.

UNITED STATES,
Plaintiff,
vs.
SOUTHERN PACIFIC RAILROAD COMPANY, et al.,
Defendants.
No. 878.

Stipulation that Answer of Southern Pacific R. R. Co. et al. be Deemed Answer of Central Trust Company of New York.

It is mutually agreed that the answer of the defendants Southern Pacific Railroad Company and others, now on

file in this court and cause, to the plaintiff's bill of complaint herein, may stand for and be deemed the answer of the defendant Central Trust Company of New York, as effectually and in all respects the same as if the said Central Trust Company of New York was named in the said answer as one of the defendants answering therein and that an order may be entered, by consent, in accordance with the foregoing stipulation.

Dated and signed on September 3d, 1889.

JOSEPH H. CALL,
Special Assistant U. S. Attorney.
WM. SINGER, Jr.,
Attorney Central Trust Company of New York.

The replication to the answer of said Southern Pacific R. R. Co. shall stand as replication to the answer of said Central Trust Company.

JOSEPH H. CALL,
Spl. U. S. Atty.
WM. SINGER, Jr.,
Atty. Central Trust Company of New York.

[Endorsed]: No. 878. U. S. Circuit Court, 9th Circuit, So. Dist. of Cal. United States vs. So. Pac. Railroad Co. et al. Stipulation. Filed Sep. 13, 1899. Wm. M. Van Dyke, Clerk. Wm. Singer, Jr., Rooms 61-2, Union Trust Building, San Francisco, Cal., Atty. for ————.

In the Circuit Court of the United States, in and for the Southern District of California.

UNITED STATES OF AMERICA, Plaintiff,

vs.

SOUTHERN PACIFIC RAILROAD COMPANY, et al., Defendants.

No. 878.

Stipulation Allowing Mary Phillips to Become Party to Suit.

It is hereby stipulated by the respective attorneys in the above-entitled action that Mary Phillips who claims to be the owner of the fractional east half of northeast quarter of section No. 5 in township 3, north of range 19 west, S. B. M., containing 79.95 acres of land, in the county of Ventura, State of California, and who claims to be the owner of the same by virtue of a conveyance by the southern Pacific Railroad Company to her late husband, Alexander Phillips, which conveyance was made on the 7th day of Jan., 1885, and that prior to said conveyance, the said land was patented to the said Railroad Company by the United States of America, may be allowed to become a party herein and to assert her rights in and to the said lands herein, as fully as if she had been made a party hereto.

It is further stipulated that this shall not have the effect to in any manner interfere with the taking of testimony or with the testimony heretofore taken herein, and that the testimony heretofore taken and now being taken may

stand as the evidence between the former parties in said action, and need not be retaken by reason of said Mary Phillips becoming a party herein.

It is further stipulated between the parties that the said Mary Phillips after she shall have appeared and filed her answer or pleading herein, shall have the right to take testimony in support of her claim.

It is further stipulated that the Court may make all proper orders herein allowing the said Mary Phillips to become a party hereto in accordance with the terms hereof, it being the intent of this stipulation that the said Mary Phillips shall be allowed to become a party herein with the same effect as if she was originally made a party hereto.

It is further stipulated that the answer of said Mary Phillips when signed shall be deemed to be replied unto, and that the bill shall be deemed to be amended so as to include her as a defendant.

Dated this 4th day of January, 1900.

JOSEPH H. CALL,
Attorney for Complainant.
WILLIAM SINGER, Jr.,
Attorney for Respondent.

[Endorsed]: No. 878. In the Circuit Court of U. S., Southern Dist. of California. United States of America, Plaintiff, vs. S. P. R. R. Co., Defendants. Stipulation. Filed Jan. 29, 1900. Wm. M. Van Dyke, Clerk. J. L. Murphey, Rooms 41, 42, 43 and 44, Phillips Block, Telephone, Main 912, Los Angeles, California, Attorney for

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In the Circuit Court of the United States, Ninth Circuit, Southern District of California.

UNITED STATES, Plaintiff,

vs.

SOUTHERN PACIFIC RAILROAD COMPANY, et al., Defendants.

No. 878.

Stipulation as to Evidence.

It is stipulated and agreed by and between the parties to this case, subject to all valid objections as to competency and relevancy, as follows:

Subdivision I.

Item 1. That all acts of Congress and laws of the State of California, whether of public or private, general or special nature, and all official acts and decisions of the Secretary of the Interior relating to the Southern Pacific Railroad Company or Atlantic and Pacific Railroad Company or affecting the rights of either of said companies or the rights of the United States, in so far as relevant and material to the issues and controversies in this cause, shall be deemed before this court for judicial notice.

Subdivision II.

Item 2. The act of Congress, approved on July 27th, 1866, entitled "An act granting lands to aid in the construction of a railroad and telegraph line from the State of Missouri and Arkansas to the Pacific Coast," is ad-

mitted in evidence, by reference to the same as printed in volume 14 of the United States Statutes at Large, pages 292 and following.

Item 3. Within due time, the Atlantic and Pacific Railroad Company mentioned in the act of Congress referred to in Item 2 hereof, assented to, and accepted the terms and conditions of, that act.

Item 4. The said Atlantic and Pacific Railroad Company filed maps designating its line of route with the Secretary of the Interior, which the Secretary of the Interior accepted as definitely locating the line of road, in sections and at dates as follows: From Springfield, Missouri, to the west line of Missouri, on December 17th, 1866; from the west line of Missouri to Kingfisher Creek, Indian Territory, on December 2d, 1871; from Kingfisher Creek to the eastern boundary of New Mexico, on February 7th, 1872; from the eastern boundary of New Mexico, to the western boundary of New Mexico, on March 12th, 1872; from the western boundary of New Mexico, through Arizona, to the east bank of Colorado River, near Needles, on March 12th, 1872; from the last mentioned point on the Colorado River to township 7 north, range 7 east, San Bernardino Meridian, in California, on August 15th, 1872; from the last mentioned point (township 7 north, range 7 east) to the west line of Los Angeles County, in California, on March 12th, 1872; and from the last mentioned point to the Pacific Coast, at San Buena-Ventura, on August 15th, 1872. As such maps were filed, as aforesaid, the Secretary of the Interior transmitted them to the Commissioner of the General Land Office, di-

recting that they be given proper action; except that the said two maps filed on August 15th, 1872, were transmitted by the Secretary of the Interior to the Commissioner on April 16th, 1874, without express direction.

Item 5. Under direction of the Secretary of the Interior, the Commissioner of the general land office, on April 22d, 1872, withdrew from pre-emption or homestead entry, private sale or location, all odd-numbered sections of public land in California lying within twenty miles and thirty miles on each side of the line of route designated upon the maps referred to in Item 4 hereof as filed on March 12th, 1872, which were not reserved, sold granted or otherwise appropriated, and were free from pre-emption, or other claims or rights, on March 12th, 1872; and on November 23d, 1874, the said Commissioner, under direction of the Secretary of the Interior, withdrew from sale or entry all odd-numbered sections of public land in California lying within twenty miles and thirty miles on each side of the line of route designated upon the maps referred to in Item 4 hereof as filed on August 15th, 1872, saying in his said order of withdrawal of November 23d 1874, that the rights of the Atlantic and Pacific Railroad Company must attach to the lands so withdrawn, as of August 15th, 1872.

Item 6. The withdrawals referred to in the next preceding paragraph hereof, were accompanied by plats showing the line of route in California designated by the maps referred to in Item 4 hereof, with 20-mile limit lines and 30-mile limit lines parallel with and on each side of the said line, as such limit lines were established

by the commissioner of the general land office under direction of the Secretary of the Interior.

Item 7. The line of route in California, designated by the maps referred to in Item 4 hereof, together with the 20-mile limit lines and 30-mile limit lines on each side thereof, referred to in Item 6 hereof, are correctly shown on the map marked Exhibit "A," filed herewith.

Item 8. The Atlantic and Pacific Railroad Company did not instruct any railroad in California.

Item 9. The act of Congress, approved on July 6th, 1886, entitled "An act to forfeit the lands granted to the Atlantic and Pacific Railroad Company to aid in the construction of its road, and for other purposes," is admitted in evidence, by reference to the same as printed in volume 24 of the United States Statutes at Large, pages 123 and following.

Item 10. Prior to commencement of this suit, the United States demanded, and the defendant Southern Pacific Railroad Company refused, reconveyance of the lands described in Exhibit "A" to the plaintiff's amended bill of complaint herein.

Subdivision III.

Item 11. The Southern Pacific Railroad Company mentioned in the act of Congress referred to in Item 2 hereof, was duly incorporated and organized as such, under the laws of California, on December 2d, 1865, and the said company was thereby authorized and empowered to construct, own, maintain and operate a railroad from the Bay of San Francisco, thence through the coun-

ties of San Francisco, Santa Clara, Monterey, San Luis Obispo, Tulare, and Los Angeles to the town of San Diego, thence easterly through San Diego County to the Colorado River.

Item 12. Within due time, the said Southern Pacific Railroad Company duly assented to, and accepted the terms and conditions of, the act of July 27th, 1866, mentioned in Item 2 thereof.

Item 13. On January 3d, 1867, the said Southern Pacific Railroad Company filed with the Secretary of the Interior a map designating a line of general route of the railroad which it claimed the right and authority to construct under the provisions of the act of Congress of July 27th, 1866, referred to in Item 2 hereof; which line of route as designated on the said map, commenced in the city of San Francisco and extended thence by way of San Jose, Gilroy, Tres Pinos, Alcalde, Huron, Goshen and Mojave, to the Colorado River, at or near Needles.

Item 14. On January 3d, 1867, the Secretary of the Interior received and filed the map referred to in Item 13 hereof, and on that day delivered it to the commissioner of the general land office with directions that the said map be given appropriate official action.

Item 15. On March 22d, 1867, the commissioner of the general land office, acting under direction of the Secretary of the Interior's letter dated March 19th, 1867, withdrew all odd-numbered sections of public land lying within twenty miles and thirty miles on each side of the line of route shown on the map set forth in Item

13 hereof, from sale or location, pre-emption or homestead entry. The Secretary of the Interior in his above-mentioned letter of March 19th, 1867, after directing the withdrawal, said: "I do not think it necessary at this time to pass upon the question as to whether this railroad company have adopted the route of any other railroad. Any indemnity of grant arising out of conflict of location under the first proviso in the third section of the act, will be reserved for future consideration."

Item 16. The withdrawal referred to in the next preceding paragraph hereof, was accompanied by a map showing the line of general route designated on the map set forth in Item 13 hereof, with 20-mile limit lines and 30-mile limit lines parallel with and on each side of the said line of route, as such limit lines were established by the commissioner of the general land office under direction of the Secretary of the Interior.

Item 17. That portion of the line of route which extends from Mojave to Needles, as shown on the said map of January 3d, 1867, with the 20-mile limit lines and 30-mile limit lines on each side thereof, referred to in the next preceding paragraph hereof, are correctly shown on the map marked Exhibit "A" filed herewith.

Item 18. On July 14th, 1868, the Secretary of the Interior rendered a decision wherein he held that the Southern Pacific Railroad Company was not lawfully authorized to construct a railroad along the line of route designated upon the map of January 3d, 1867, set forth in Item 13 hereof, and ordered the withdrawals referred to in Item 15 hereof, set aside; on

August 20th, 1868, the Secretary of the Interior vacated the said order of July 14th, 1868, as to all lands south of San Jose; on November 2d, 1869, the Secretary of the Interior revoked the said order of August 20th, 1868, and directed restoration of the lands withdrawn on March 22d, 1867; on November 11th, 1869, upon review, Secretary Cox affirmed his said order of November 2d, 1869, and directed restoration of the said lands after sixty days publication; on December 15th, 1869, Secretary Cox suspended the said orders of restoration made on November 2d, 1869, and November 11th, 1869; and on July 26th, 1870, the Secretary of the Interior directed that the original withdrawals of March, 1867, set forth in Item 15 hereof, be respected.

Item 19. The act of Congress, approved on June 25th, 1868, entitled "An act relative to filing reports of railroad companies," is admitted in evidence, by reference to the same as printed in volume 15 of the United States Statutes at Large, page 79.

Item 20. The act of Congress, approved on July 25th, 1868, entitled "An act to extend the time for the construction of the Southern Pacific Railroad in the State of California," is admitted in evidence, by reference to the same as printed in volume 15 of the United States Statutes at Large, page 187.

Item 21. Prior to the year 1869, the San Francisco and San Jose Railroad Company, was duly incorporated and organized under the laws of California, and thereby authorized to construct a railway from San Francisco to San Jose.

Item 22. During the year 1869, the said San Francisco and San Jose Railroad Company constructed and fully equipped a railroad from San Francisco to San Jose; during the same year the said Southern Pacific Railroad Company constructed and fully equipped a continuation of the said railroad from San Jose to Gilroy, a distance of 30.26 miles; and during the years 1869 and 1870 the said Southern Pacific Railroad Company constructed and fully equipped a further continuation of the said railroad from Gilroy to Tres Pinos, a distance of more than 20 miles. All of the said railroad from San Francisco to Tres Pinos was constructed upon, or as nearly as practicable upon, the line designated on the map of January 3d, 1867, set forth in Item 13 of this statement.

Item 23. By an act, approved on March 1st, 1870, entitled "An act relating to certificates of incorporation," the legislature of California provided as follows:

"Section 1. Any corporation now or hereafter organized under the laws of this State may amend its articles of association, or certificate of incorporation, by a majority vote of the board of directors, or trustees, and by a vote or written assent of the stockholders representing at least two-thirds of the capital stock of such corporation; and a copy of the said articles of association or certificate of incorporation as thus amended, duly certified to be correct by the president and secretary of the board of directors, or trustees of such corporation, shall be filed in the same office, or offices, where the original articles or certificate are required

by law to be filed; and from the time of filing such copy of the amended articles or certificate, such corporation shall have the same powers, and it and the stockholders thereof shall be thereafter subject to the same liabilities as if such amendment had been embraced in the original articles or certificate; provided, that the time of the existence of such corporation shall not be thereby extended beyond the time fixed in the original articles or certificate; and provided, further, that such original and amended articles or certificate shall, together, contain all the matters and things required by the law under which the original articles of association or certificate of incorporation were executed and filed; and provided further, that nothing herein contained shall be construed to cure or amend any defect existing in any original certificate of incorporation heretofore filed, by reason of the failure of such certificate to set forth matters required by law to make the same valid as a certificate of incorporation at the time of the filing thereof; also provided, that unless the vote or written assent of all the stockholders has been obtained, then a notice of the intention to make such amendment shall first be advertised for sixty days, in some newspaper in the town or county in which the principal place of business of said company is located; and the written protest of any one of said stockholders, or his duly authorized agent or attorney, whose assent has not been obtained, filed with the secretary of the said company, shall, unless withdrawn, be effectual to prevent the adoption of such amendment; provided, that nothing in

this act shall be construed to authorize any corporation to diminish its capital stock.

Sec. 2. This act shall take effect and be in force after its passage."

Item 24. By an act approved on April 4th, 1870, entitled "An act to aid in giving effect to an act of Congress relating to the Southern Pacific Railroad Company," the legislature of California enacted as follows:

"Section 1. Whereas, by the provisions of a certain act of Congress of the United States of America, entitled an act granting lands to aid in the construction of a railroad and telegraph line from San Francisco to the eastern line of the State of California, approved July twenty-seventh, eighteen hundred and sixty-six, certain grants were made to, and certain rights, privileges, powers and authorities were vested in and conferred upon the Southern Pacific Railroad Company, a corporation duly organized and existing under the laws of the State of California; therefore, to enable the said company to more fully and completely comply with and perform the requirements, provisions and conditions of the said act of Congress, and all other acts of Congress now in force or which may hereafter be enacted, the State of California hereby consents to said act; and the said company, its successors and assigns, are hereby authorized and empowered to change the line of its railroad so as to reach the eastern boundary line of the State of California by such route as the company shall determine to be the most practicable, and to file new amendatory articles of association; and the right, power

and privilege is hereby granted to, conferred upon and vested in them, to construct, maintain and operate, by steam or other power, the said railroad and telegraph line mentioned in the said acts of Congress, hereby confirming to and vesting in the said company, its successors and assigns, all the rights, privileges, franchises, power and authority conferred upon, granted to or vested in said company by the act of Congress and any act of Congress which may be hereafter enacted.

Sec. 2. This act shall take effect and be in force from and after its passage."

Item 25. The joint resolution of Congress, approved on July 28th, 1870, entitled "Joint resolution concerning the Southern Pacific Railroad of California," is admitted in evidence, by reference to the same as printed in volume 16 of the United States Statutes at Large, page 382.

Item 26. On October 11th, 1870, articles of association, amalgamation and consolidation were made and entered into, in due conformity to and compliance with the laws of California, by and between the said Southern Pacific Railroad Company and San Francisco and San Jose Railroad Company, whereby it was provided that the last named company was amalgamated and consolidated with the said Southern Pacific Railroad Company, under the corporate name and style of Southern Pacific Railroad Company, and that the said Southern Pacific Railroad Company thereby became the owner of all stock and property of the said San Francisco and San Jose Railroad Company; and the said

articles further provided that the Southern Pacific Railroad Company was authorized to purchase, construct, maintain, own and operate a railroad from the city of San Francisco through the counties of San Francisco, San Mateo, Santa Clara, Monterey, Fresno, Tulare, Kern, San Bernardino and San Diego to the Colorado river, and such branch line railroads as its board of directors might deem advantageous.

Item 27. The said Southern Pacific Railroad Company never constructed any railroad between Tres Pinos and Alcalde, a distance of about fifty miles.

Item 28. The said Southern Pacific Railroad Company completed the construction of, and fully equipped, a continuous line of railroad from Tres Pinos, by way of Huron, Goshen and Mojave, to junction with the Atlantic and Pacific railroad, on the Colorado river, at Needles, in several sections, on or about the following dates: The 17th section, 20.559 miles, from Tres Pinos (in NE. ¼ of section 23, township 21 south, range 14 east, M. D. M.) to a point in the NW. ¼ of section 11, township 20 south, range 17 east, M. D. M., on July 16th, 1888; the 9th section, 20 miles, from the last mentioned point to the NE. ¼ of section 2, township 19 south, range 20 east, M. D. M., on January 9th, 1877; the 8th section 20 miles, from the last-mentioned point to Goshen (in section 19, township 18 south, range 24 east, M. D. M.), on December 11th, 1876; the 3d section 20 miles, from Goshen to the NW. ¼ of section 30, township 21 south, range 25 east, M. D. M., on June 30th, 1872; the 4th section, 20 miles, from the last mentioned point to the

NW.¼ of section 2, in township 25 south, range 25 east, M. D. M., on June 30th, 1873; the 5th section, 20 miles, from the last mentioned point to the NE. ¼ of section 9, township 28 south, range 26 east, M. D. M., on June 13th, 1874; the 6th section, 20 miles, from the last mentioned point to the NE. ¼ of section 5, township 30 south, range 29 east, M. D. M., on June 10th, 1875; the 7th section, 20 miles, from the last mentioned point to the SE. ¼ of section 33, township 30 south, range 31 east, M. D. M., on January 13th, 1876; the 10th section 41.66 miles, from the last mentioned point to Mojave (in the NE. ¼ of section 17, township 11 north, range 12 west, S. B. M.), on December 17th, 1877; the 11th section, 12th section, 13th section, 14th section, 15th section and 16th section, in all 242.507 miles, connecting with the 10th section at Mojave and extending thence to the Colorado river, at or near Needles, all constructed prior to April 19th, 1883.

Item 29. Commissioners, duly appointed for that purpose, examined all of the said railroad from San Jose to Tres Pinos and from Alcalde to the Colorado river, at or near Needles,after construction,respectively, of each of the said several sections thereof, and duly reported to the Secretary of the Interior that each of said sections had been completed in a good, substantial and workmanlike manner, as near as may be along the line indicated on the map of January 3d, 1867, set forth in Item 13 of this stipulation, in all respects as required by the said act of July 27th, 1866, and recommended that the same be accepted and approved; each of which

reports was accompanied by a map of the survey, location and profile of the section of road as constructed and reported upon, duly verified by the proper officers of the said Southern Pacific Railroad Company as a map and profile of such railroad as finally located and constructed and as correctly showing the locationu thereof, with the approval of the said commissioner endorsed upon the maps; and each of said reports and maps were accepted and approved by the Secretary of the Interior. Such reports were made and maps approved by the commissioners, and said reports and maps were received, filed and approved by the Secretary of the Interior, on the following dates: 1st section (San Jose to Gilroy), report made and maps approved by the commissioners on October 29th, 1870, report and map approved by the secretary on January 20th, 1871; 2d section (Gilroy to Tres Pinos), report made and maps approved by the commissioners on September 12th, 1871, report and map approved by the secretary on October 13th, 1871; 3d section, report made and map approved by the commissioners on September 14th, 1872, report and map approved by the secretary on September 28th, 1872; 4th section, report made and map approved by the commissioners on July 23d, 1873, report and map approved by the secretary on August 5th, 1873; 5th section, report made and map approved by the commissioners on September 19th, 1874, report and map approved by the secretary on October 9th, 1874; 6th section, report made and map approved by the commissioners on August 3d, 1875, re-

port and map approved by the secretary on August 21st, 1875; 7th section, report made and map approved by the commissioners on May 27th, 1876, report and map approved by the secretary on June 14th, 1876; 8th section, report made and map approved by the commissioners on January 2d, 1877, report and map approved by the secretary on January 22d, 1877; 9th section, report made and map approved by the commissioners on February 9th, 1877, report and map approved by the secretary on February 20th, 1877; 10th section, report made and map approved by the commissioners on January 30th, 1878, report and map approved by the secretary on February 11th, 1878; 11th section, 12th section, 13th section, 14th section, 15th section and 16th section, reports made and maps approved by the commissioners on December 27th, 1884, reports and maps received and filed by the secretary on January 7th, 1885, and approved by thesecretary on September ——, 1897; 17th section, report made and map approved by the commissioners on April 2d, 1889, report and map approved by the secretary on October 23d, 1889.

Item 30. The line of road as located and constructed by the Southern Pacific Railroad Company from Mojave to Needles, on the Colorado River, and as shown on the maps of the 11th, 12th, 13th, 14th, 15th and 16th sections thereof, filed with the Secretary of the Interior on January 7th, 1885, as aforesaid, is correctly shown on the map filed with this stipulation, marked Exhibit "A."

Subdivision IV.

Item 31. The act of Congress, approved on March 3d, 1871, entitled "An act to incorporate the Texas Pacific Railroad Company, and to aid in the construction of its road, and for other purposes," is admitted in evidence by reference to the same as printed in volume 16 of the United States Statutes at Large, pages 573 and following.

Item 32. On May 16th, 1871, the board of directors of the Southern Pacific Railroad Company adopted a resolution accepting the terms, conditions and impositions of the act of Congress mentioned in the next preceding paragraph hereof, and directing that a copy thereof, certified under the seal of said company, be forwarded to and filed with the Secretary of the Interior; and on February 25th, 1887, a copy of the said resolution, certified by the Secretary of the said Company, under the corporate seal of the said Company, was filed with the Secretary of the Interior.

Item 33. On April 3d, 1871, the said Southern Pacific Railroad Company filed with the Secretary of the Interior a map designating the line of general route of the railroad which it claimed the right and authority to construct under the provisions of the said act of March 3d, 1871; which map the Secretary of the Interior on that day received, filed and delivered to the commissioner of the general land office, with directions that the same be given appropriate action.

Item 34. On April 21st, 1871, the commissioner of the general land office, under direction of the Secretary

of the Interior, withdrew all odd-numbered sections of public land lying within twenty miles and thirty miles on each side of the line of route shown on the map referred to in Item 33 hereof, from sale or location, preemption or homestead entry.

Item 35. The withdrawal referred to in Item 34 hereof, was accompanied by a plat showing the line of general route designated on the map set forth in Item 33 of this stipulation, with 20-mile limit lines and 30-mile limit lines parallel with and on each side of the said line of route, as such limit lines were established by the commissioner of the general land office under direction of the Secretary of the Interior.

Item 36. The line of route designated by the said map filed on April 3d, 1871, referred to in Item 33 hereof, is correctly shown on the map marked Exhibit "A," filed herewith.

Item 37. On April 15th, 1871, the said Southern Pacific Railroad Company, duly conforming to and complying with the laws of California, amended its articles of incorporation as they then existed, so as to include therein a particular description of the line of route designated on the plat set forth in Item 33 hereof.

Item 38. The said Southern Pacific Railroad Company completed the construction of, and fully equipped, a continuous railroad from Mojave, by way of Los Angeles, to the Colorado River, at or near Yuma, in several sections, along or near the line designated on the said general route map of April 3d, 1871, all prior to December 6th, 1877.

Item 39. Commissioners, duly appointed for that purpose, examined all of the said railroad after construction, respectively, of each of the several sections thereof, and duly reported to the Secretary of the Interior that each of said sections had been completed in a good, substantial and workmanlike manner, in all respects as required by the said act of March 3d, 1871; and recommended that the same be accepted and approved; each of which reports was accompanied by a map of the survey, location and profile of the section of road as constructed and reported upon, duly verified by the proper officers of the said Southern Pacific Railroad Company as a map and profile of such railroad as finally located and constructed, and showing the correct location thereof, with the approval of the said Commissioners endorsed upon the maps and the line of road shown upon the said maps, together with the 20-mile limit lines and 30-mile limit lines on each side thereof, are correctly shown on the map marked Exhibit "A," filed herewith. The said reports were made and maps approved by the Commissioners, and the said reports and maps were filed and approved by the Secretary of the Interior, and approved by the President of the United States, on the following dates: 1st section (from a point in the NW. ¼ of section 3, township 2 north, range 15 west, S. B. M., to a point in the NE. ¼ of section 27, township 1 south, range 9 west, S. B. M., a distance of 50 miles), report made and map approved by the Commissioners on April 15th, 1874, report and map filed and approved by the Secretary of the In-

of the Interior, withdrew all odd-numbered sections of public land lying within twenty miles and thirty miles on each side of the line of route shown on the map referred to in Item 33 hereof, from sale or location, preemption or homestead entry.

Item 35. The withdrawal referred to in Item 34 hereof, was accompanied by a plat showing the line of general route designated on the map set forth in Item 33 of this stipulation, with 20-mile limit lines and 30-mile limit lines parallel with and on each side of the said line of route, as such limit lines were established by the commissioner of the general land office under direction of the Secretary of the Interior.

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Item 39. Commissioners, duly appointed for that purpose, examined all of the said railroad after construction, respectively, of each of the several sections thereof, and duly reported to the Secretary of the Interior that each of said sections had been completed in a good, substantial and workmanlike manner, in all respects as required by the said act of March 3d, 1871; and recommended that the same be accepted and approved; each of which reports was accompanied by a map of the survey, location and profile of the section of road as constructed and reported upon, duly verified by the proper officers of the said Southern Pacific Railroad Company as a map and profile of such railroad as finally located and constructed, and showing the correct location thereof, with the approval of the said Commissioners endorsed upon the maps and the line of road shown upon the said maps, together with the 20-mile limit lines and 30-mile limit lines on each side thereof, are correctly shown on the map marked Exhibit "A," filed herewith. The said reports were made and maps approved by the Commissioners, and the said reports and maps were filed and approved by the Secretary of the Interior, and approved by the President of the United States, on the following dates: 1st section (from a point in the NW. ¼ of section 3, township 2 north, range 15 west, S. B. M., to a point in the NE. ¼ of section 27, township 1 south, range 9 west, S. B. M., a distance of 50 miles), report made and map approved by the Commissioners on April 15th, 1874, report and map filed and approved by the Secretary of the In-

terior on May 8th, 1874, and report approved by the President of the United States on May 9th, 1874; 2d section (from the said point in the NE. ¼ of section 27, township 1 south, range 9 west, S. B. M., to a point in the SW. ¼ of section 4, township 3 south, range 1 west, S. B. M., a distance of 50 miles), report made and map approved by the commissioners on October 21st, 1875, report and map filed and approved by the Secretary on November 8th, 1875, and report approved by the President on November 11th, 1875; 3d section (from the said point in the SW. ¼ of section 4, township 3 south, range 1 west, S. B. M., to a point in the SW. ¼ of section 24, township 5 south, range 7 east, S. B. M., a distance of 50 miles), report made and map approved by the commissioners on June 22, 1876, report and map filed and approved by the Secretary on July 10th, 1876, and report approved by the President on July 21st, 1876; 4th section (from the said point in the NW. ¼ of section 3, township 2 north, range 15 west, S. B. M., to a point in the NE. ¼ of section 17, township 11 north, range 12 west, S. B. M., a distance of 78.59 miles), report made and map approved by the commissioners on February 17th, 1877, report and map filed and approved by the secretary on March 1st, 1877, and report approved by the President on March 2d, 1877; 5th section (from the said point in the SW. ¼ of section 24, township 5 south, range 7 east, S. B. M., to a point in the SE. ¼ of section 26, township 16 south, range 22 east, on the Colorado River, a distance of 118.37 miles), report made and map approved by the commissioners on December

6th, 1877, report and map filed and approved by the Secretary on January 19th, 1878, and report approved by the President on January 23d, 1878.

Subdivision V.

Item 40. The defendant Southern Pacific Railroad Company filed lists selecting each of the tracts described in Exhibit "A" and Exhibit "B" to the plaintiff's bill, and paid the costs of surveying, selecting and patenting the same, prior to the issue of the respective patents therefor; which selections were made in the manner and form provided by the rules and regulations prescribed by the Secretary of the Interior; and each selection was certified by the register and receiver of the proper land office of the United States as being for public nonmineral land, not swamp nor overflowed in character, nor reserved, sold, granted, or otherwise appropriated, and free from homestead, pre-emption, state or other valid claims on file in their office.

Subdivision VI.

Item 41. Either or any of the parties to this suit may introduce in evidence any part of the record in cases of United States vs. Southern Pacific Railroad Company, et al., Nos. 68, 177, 184 and 600 on the docket of this court, so far as material or relevant to the issues in this cause; and either or any of the parties to this suit may introduce further and additional testimony and evidence, at any time within sixty days from this date.

Item 42. It is further stipulated that the bill of complaint herein shall be deemed so amended as to

embrace the names of George C. Hagar, San Fransisco Savings Union (a corporation), Bank of America (a corporation), H. L. Macneil, W. D. Turner and Mary J. Mackay, as parties defendant thereto.

Item 43. It is further expressly stipulated and agreed by and between the parties to this cause that the map marked Exhibit "A" attached to this stipulation, is not accurate and correct in all respects, and shall not be used as evidence to secure an adjudication upon any issue or title as to any lands other than those described in Exhibits "A" and "B" to the bill of complaint, but that the said map marked Exhibit "A" attached to this stipulation, does approximately show the location of the several lines of road marked thereon and of the several withdrawal limits also shown thereon, and correctly shows the relative situation of the lands described in Exhibits "A" and "B" to the bill of complaint with respect to the lines of route and withdrawal limits of the Atlantic and Pacific and Southern Pacific Railroad Companies.

Dated and signed on February 20th, 1900.

JOSEPH H. CALL,
Special Assistant U. S. Attorney.
WM. SINGER, Jr.,
Attorney for Defendants Other than D. O. Mills.

[Endorsed]: No. 878. U. S. Circuit Court, 9th Circuit, Southern District of California. United States vs. Southern Pacific Railroad Co., et al. Stipulation. Filed Feb. 20, 1900. Wm. M. Van Dyke, Clerk. Chas. N. Williams, Deputy. Wm. Singer, Jr., N. E. Cor. 2d and Mission Sts., San Francisco, Cal., Atty. for Defts. Joseph H. Call, Spl. U. S. Atty.

FOLD-OUT IS TOO LARGE TO BE FILMED

In the Circuit Court of the United States, Ninth Circuit, Southern District of California.

UNITED STATES,

Plaintiff,

vs.

SOUTHERN PACIFIC RAILROAD COMPANY, et al., Defendants. } No. 878.

Stipulation as to Evidence.

It is stipulated and agreed by the respective parties to this suit, as follows:

That odd sections of land, exceeding 20,000 acres in quantity are to be found within the indemnity limits of each of the grants made to the Southern Pacific Railroad Company by the acts of July 27th, 1866, and March 3d, 1871, which are subject to selection, but have not been selected, by the said company.

That the opinions of the Supreme Court as reported in 146 U. S. pp. 570 to 619 and 168 U. S. pp. 1 to 68, may be deemed properly and sufficiently offered in evidence on behalf of the plaintiff, and before this Court in that way, subject to objection by the defendants as irrelevant and immaterial.

That in fact many of the persons shown by Exhibit "A" to the defendants' answer to have purchased, and received deeds of conveyance, from the Southern Pacific Railroad Company for, lands patented to that com-

Railroad Company for, lands patented to that Company by the United States thereafter subdivided such lands and sold and conveyed various subdivisions thereof to persons not made parties to this suit by statement of their names; and at the time this suit was commenced, and now, the individual owners, under such conveyances, of the lands described in Exhibit "A" to the defendants' answer were and are very numerous: To which facts, as evidence in this case, the defendants object, on the ground that such facts are irrelevant and immaterial here—particularly on the ground that no relations exist between such subsequent purchasers and any of these defendants.

That the defendant Southern Pacific Railroad Company executed and delivered its three several mortgages, each covering all odd sections of land granted to it by the congressional Acts of July 27th, 1866, and March 3d, 1871, to secure payment of mortgage bonds to be issued and sold; each of said mortgages describing the lands so mortgaged as the lands granted to said company by the acts of Congress of July 27th, 1866, and March 3d, 1871. The first of said mortgages bears date April 1st, 1875, and was given unto D. O. Mills and Lloyd Tevis, as trustees; the second bears date August 25th, 1888, and was given unto the Central Trust Company (a corporation); and the third bears date September 15th, 1893, and was given unto the Central Trust Company of New York (a corporation). That at the time this suit was brought there were and still are, outstanding and unpaid, bonds sold to pur-

chasers in good faith, to the amount of more than one million dollars (purchase price paid) under each of said mortgages; and the bonds so outstanding, issued under the first-mentioned mortgage and sold for more than one million dollars, were issued and sold prior to the year 1887.

May 9, 1900.

JOSEPH H. CALL,
Spl. U. S. Atty.
WM. SINGER, Jr.,
Attorney for Defendants.

[Endorsed]: No. 878. U. S. Circuit Court, Ninth Circuit, Southern District of Cala. United States vs. Southern Pacific Railroad Co., et al. Stipulation. Filed May 10, 1900. Wm. M. Van Dyke, Clerk. Wm. Singer, Jr., Rooms 61-2, Union Trust Building, N. E. Cor. 2d and Mission Sts., San Francisco, Cal., Atty. for Defts.

In the Circuit Court of the United States, Ninth Circuit, Southern District of California.

THE UNITED STATES,
Plaintiff,
vs.
THE SOUTHERN PACIFIC RAILROAD COMPANY, and Others,
Defendants.
No. 878.

Testimony.

Testimony taken on behalf of the plaintiff at the office of A. M. Cates, Special Examiner and Stenographer,

in pursuance of the annexed notice and by consent of parties, present Joseph H. Call, Esq., Special U. S. Attorney, and Wm. Singer, Esq., Jr., attorney for defendants, except D. O. Mills.

Thereupon the hearing was adjourned to the United States Court building in the city of Los Angeles.

Taking of testimony resumed.

WM. M. VAN DYKE, being first duly sworn, on behalf of plaintiff, testified as follows, in answer to the following interrogatories.

(By Mr. CALL.)

Q. 1. You are clerk of the United States Circuit Court, Southern District of California?

A. Yes, sir.

Q. 2. You have in your custody as clerk the records in the cases of United States vs. Southern Pacific Railroad Company, numbers 68, 184 600 and other Government cases pending in this district? A. Yes, sir.

Q. 3. Please produce before the Examiner the papers in those cases I requested the other day for you to lay aside.

(Records produced by witness.)

Mr. CALL.—I offer in evidence the stipulation entered into between the parties to this cause on the 20th day of February, 1900, and filed in the clerk's office on the same date.

I also offer in evidence certain parts of the record in case of United States vs. Southern Pacific Railroad Company and others, defendants, consolidated numbers 67, 68 and 69 annexed to the certificate of the clerk of

the United States Circuit Court under date of March 14, 1900, and ask that the same be marked Plaintiff's Exhibit "C."

Mr. SINGER.—I object to it as incompetent, irrelevant and immaterial and uselessly encumbering the record and not being responsive to any issues tendered or joined by the pleadings.

Mr. CALL.—I also offer in evidence certain parts of the record in case of United States vs. Southern Pacific Railroad Company, et al., number 184 on the docket of the United States Circuit Court, Southern District of California, under the certificate of the clerk of said Circuit Court, dated March 15, 1900, and ask that the same be marked Plaintiff's Exhibit "D."

Mr. SINGER.—Same objection as to the next preceding offer.

Mr. CALL.—I also offer in evidence certain parts of the record in the case of United States vs. Southern Pacific Railroad Company et al., number 184 on the docket of the United States Circuit Court, Southern District of California, under certificate of the clerk of said court of date March 19, 1900, and ask that the same be marked Plaintiff's Exhibit "E."

Mr. SINGER.—Same objection as to the next preceding offer.

Mr. CALL.—I also offer in evidence certain parts of the record in the case of United States vs. Southern Pacific Railroad Company, et al., number 177 on the docket of the United States Circuit Court, Southern

District of California, under seal of the clerk of said court, dated March 19, 1900, and ask that the same be marked Plaintiff's Exhibit "F."

Mr. SINGER.—Same objection as to the next preceding offer.

Mr. CALL.—I offer in evidence the amended and supplemental answer of the Southern Pacific Railroad Company and other defendants in the case of United States vs. Southern Pacific Railroad Company, et al., number 600 on the docket of the United States Circuit Court, Southern District of California, which answer was filed July 27, 1896, except that part commencing with "Contract number 11,206, issued September 21, 1892, to W. M. Bailey and M. C. Bailey," and ending with the synopsis of contract number 3596, with the words, "Patent number 27, issued November 28, 1894, for the land above described," and ask that the same be marked Plaintiff's Exhibit "G."

Mr. SINGER.—Same objection as to the next preceding offer.

Mr. CALL.—I offer in evidence the opinions of the Supreme Court of the United States in the cases of United States vs. Southern Pacific Railroad Company, et al., by reference to the same as contained and reported in Volume 146 United States, pages 570-619, and in 168 United States, pages 1-66.

I offer in evidence a certified copy of the decision of the Interior Department of June 8, 1892, in the case of Southern Pacific Railroad Company vs. Milton McWhor-

ter, and ask that the same be marked Plaintiff's Exhibit "H."

I also offer in evidence a certified copy of a decision of the Interior Department of December 12, 1890, in case of William C. Morgan vs. Southern Pacific Railroad Company, and ask that the same be marked Plaintiff's Exhibit "I."

I offer in evidence a certified copy of the letter of the commissioner of the general land office dated November 23, 1874, addressed to the Register and Receiver at Visalia, California, relating to the withdrawal for the Atlantic and Pacific Railroad Company in California, and ask that the same be marked Plaintiff's Exhibit "J."

Mr. SINGER.—I object to the last offer as irrelevant, for the reason that it is uselessly encumbering the record as to matters stipulated. It is therefore either cumulative or else contradictory of a stipulated fact.

Mr. CALL.—I offer in evidence a certified copy of a letter of the commissioner of the general land office, dated November 23, 1874, addressed to the Receiver and Register at San Francisco, relating to the withdrawal for the Atlantic and Pacific Railroad, and ask that the same be marked Plaintiff's Exhibit "K."

Mr. SINGER.—Same objection as to the next preceding offer.

Mr. CALL.—I offer in evidence a certified copy of a letter of the commissioner of the general land office to the Register and Receiver at Los Angeles, California, dated November 23, 1874, and ask that the same be marked Plaintiff's Exhibit "L."

Mr. SINGER.—Objected to as irrelevant and immaterial, and as either contradictory of a stipulated fact or cumulative.

Note by Examiner.—It is admitted between the parties to this cause, by their attorneys and solicitors, that the value of the tracts of land respectively described in Plaintiff's Exhibits "A" and "B" to the bill of complaint, is the price for which such lands have been sold or contracted to be sold by the Southern Pacific Railroad Company.

Mr. CALL.—I offer in evidence certified copies of the following orders of withdrawal of the commissioner of the general land office upon the map, filed in sections, of definite location of the Southern Pacific Railroad from Tehachapi Pass to the Colorado River at or near Fort Yuma, to wit:

The order of withdrawal of the first section of said railroad; and the order of withdrawal of the second section of said railroad; and the order of withdrawal of the third section of said railroad; and the order of withdrawal of the fourth section of said railroad, which are on file in the case of United States vs. Southern Pacific Railroad Company, number 600, and marked respectively defendant's exhibits 319, 320, 321 and 322.

Mr. SINGER.—I object to the admission in evidence of the exhibits mentioned as uselessly encumbering the record, because all the facts which they would tend, in any degree, to prove or disprove, are agreed to in the stipulation this day introduced.

Note by Examiner.—It is stipulated, subject to the above objection, that the offer of the foregoing exhibits

shall be considered to have been made with the same effect as if now produced and identified by the Examiner, and shall be deemed to be a part of the record in this case, subject to the same objection.

Mr. CALL.—I likewise offer in evidence the orders of the commissioner of the general land office of withdrawal upon the map of definite location of the Southern Pacific Railroad so-called main line, being exhibits 302 to 310, inclusive, in said case 600.

Note.—Same objection made and same stipulation as to the next preceding offer.

By stipulation of parties the signature of witness Wm. M. Van Dyke, is waived.

Hearing adjourned, by consent, to May 7, 1900.

Monday, May 7, 1900, 10 o'clock A. M.

Hearing adjourned to May 14, 1900, at the same time and place.

Monday, May 14, 1900, 10 o'clock A. M.

Hearing adjourned to May 15, 1900, at the same time and place.

Tuesday, May 15, 1900, 10 o'clock A. M.

Present: Joseph H. Call, Esq., Special U. S. Attorney, J. L. Murphey, Esq., appearing for Mary Phillips, one of the defendants herein, asks that his appearance be entered as appearing for Mary Phillips, widow, heir and distributee of Alexander Phillips, deceased; R. H. F. Variel, Esq., appears for Bank of America, a corporation, H. L. Macneil, San Francisco Savings Union, a corporation, and W. D. Turner, defendants herein.

Note by Examiner.—Objections as to competency of the testimony reserved.

(By Mr. MURPHEY.)

I offer a certified copy of the order assigning the whole of the estate of Alexander Phillips, deceased, to his widow, Mary Phillips, who is one of the defendants herein, and ask that it be marked Defendant's Exhibit "A." The said document is introduced in connection with the proof shown in Exhibit "A," attached to the answer of the Southern Pacific Railroad Company, relating to contract number 4177, on page 62 of said exhibit.

Paper filed by the Examiner and marked Defendants' Exhibit "A."

(By Mr. VARIEL.)

I offer in support of the answer filed in behalf of the Bank of America, a certificate of the county recorder of the county of San Bernardino, setting forth a complete schedule of the title to the lands described in this certificate, and showing that the legal title to the same was granted by patent to the Southern Pacific Railroad Company, a corporation, and that it has since, by mesne conveyances and by proceedings had in the Superior Court of San Bernardino County, become and it is now vested in the Bank of America, a corporation.

Paper filed by the Examiner and marked Defendants' Exhibit "B."

I offer a similar certificate in support of the title of the defendant H. L. Macneil.

Paper filed by the Examiner and marked Defendants' Exhibit "C."

I offer a similar certificate in support of the answer

and claims of the defendant San Francisco Savings Union, a corporation.

Paper filed by the Examiner and marked Defendants' Exhibit "D."

I offer a similar certificate in support of the answer of the defendant W .D. Turner.

Paper filed by the Examiner and marked Defendants' Exhibit "E."

Mr. CALL.—I will consent that the four certificates referred to by Mr. Variel, may stand in lieu of the original deeds and instruments referred to and set forth in the respective certificates, subject to all other objections as to the competency and materiality of the evidence.

Hearing adjourned, by consent, to May 29, 1900.

Tuesday, May 29, 1900, 10 o'clock, A. M.

No testimony taken.

(Whereupon the proceedings before the special examiner were closed.)

I certify the foregoing testimony was taken pursuant to an order of the above-named court made and entered upon the minutes of said court at the times and places in the foregoing testimony named in the city of Los Angeles, county of Los Angeles, State of California, in my presence and in the presence of counsel in said testimony named, and constitutes all the testimony then and there adduced; that previous to giving his testimony, the witness in said record named was by me duly sworn to tell the truth, the whole truth, and nothing but the truth in said cause; that said testimony was fully, truly, and correctly taken in shorthand

and transcribed by me; that the said testimony after being so transcribed was not read by, or by me to the said witness, nor signed by him, it being expressly agreed and stipulated between counsel for the respective parties that such reading and signing should be waived as in said record set forth.

Accompanying said testimony and forming a part thereof, are the several exhibits introduced in connection therewith and referred to and specified therein, as set forth in the foregoing record.

I further certify that I am not attorney nor of counsel for any of the parties to said cause, nor in any way interested in the event thereof.

In witness whereof, I have hereunto set my hand this 1st day of June, A. D. 1900.

A. M. CATES,

Special Examiner and Stenographer.

Plaintiff's Exhibit "C."

In the Circuit Court of the United States, Ninth Circuit, Southern District of California.

Nos. 67, 68 and 69—Consolidated by Order of Court.

THE UNITED STATES OF AMERICA,

Plaintiff,

vs.

THE SOUTHERN PACIFIC RAILROAD COMPANY, THE SOUTHERN PACIFIC COMPANY OF KENTUCKY, LEWIS H. BIXBY, H. J. PARKS, CLARA E. CUMBERLAND, THOMAS S. OLDHAM, O. MORGAN, THE POMONA LAND AND WATER COMPANY, L. L. BRADBURY, H. M. CRAMPTON, CARLTON SEAVES, STODDARD JESS, ELIAS FINK, CHARLES N. PECK, S. W. MOORE, GEORGE D. RIPLEY, C. C. JOHNSON, WILLIAM S. HENDERSON, FRANK JOHNSON, GEORGE RHORES, CASSIE L. FOSS AND JOSEPH HINKELL,

Defendants.

Second Amended Bill of Complaint.

To the Judges of the Circuit Court of the United States for the Southern District of California:

The United States of America, by the Attorney General thereof, brings this, its second amended bill, against the Southern Pacific Railroad Company, a corporation organized and existing as hereinafter set forth; The Pomona Land and Water Company, a corporation organized and

existing under the laws of California; The Southern Pacific Company of Kentucky, a corporation organized and existing under the laws of Kentucky, and owning and operating a railroad in this judicial district; Lewis H. Bixby, H. J. Parks, Clara E. Cumberland, Thomas S. Oldham, O. Morgan, L. L. Bradbury, H. M. Crampton, Carlton Seaves, Stoddard Jess, Elias Fink, Charles N. Peck, S. W. Moore, George D. Ripley, C. C. Johnson, William S. Henderson, Frank Johnson, George Rhores, Cassie L. Foss and Joseph Hinkell, each a resident and a citizen of the State of California.

And thereupon your orator complains and alleges: that on December 2, 1865, a corporation was organized under the laws of the State of California by the name and style of the Southern Pacific Railroad Company, and under a general law thereof approved May 20, 1861, entitled "An act to provide for the incorporation of railroad companies and the management of the affairs thereof, and other matters relating thereto, with the corporate name of the Southern Pacific Railroad Company." Said act is printed in the Statutes of California, 1861, at page 607, and sections 2, 3, 17 (divisions first, second and seventh) 18, 40 and 43, are as follows, to wit: Chapter DXXXII. "An act to provide for the incorporation of railroad companies and the management of the affairs thereof, and other matters relating thereto."

"The People of the State of California, represented in Senate and Assembly, do enact as follows:

"Section 1. ——"

"Sec. 2. The said articles of association shall set forth

the name of the incorporation, the number of years the same is to continue in existence, which shall not exceed fifty years, the amount of capital stock of the company, which shall be divided into shares of one hundred dollars each, and which shall be the actual contemplated cost of constructing the road, together with the cost of the right of way, motive power and every other appurtenance and thing for the completion and running of said road, as nearly as can be estimated by competent engineers, the names and number of the directors to manage the affairs of the company, who shall hold their office until others are elected, as shall be provided by the by-laws of the company, the place from and to which the proposed road is to be constructed, and the counties into and through which it is intended to pass and its length as near as may be. Each subscriber to such articles of association shall personally subscribe thereto his name, place of residence, and the number of shares of stock taken by him in such company; provided that in case a person desirous of becoming a subscriber, but compelled to be absent from the State at the time of subscribing to such articles of association, he having paid the ten per cent required by law upon his subscription, may sign the same by written proxy, or power of attorney, to that effect; and there shall be endorsed, or attached to the said articles so subscribed an affidavit, made by any three of the directors named therein, setting forth in substance that said amount of stock has been subscribed, and that ten per cent in cash thereon has actually and in good faith been paid in as aforesaid, and that the subscribers to said articles are

all known by one, or the other, of the said three directors to be subscribers thereto, and to be the persons so represented."

"Sec. 3. Articles of association formed in pursuance of the provisions of the foregoing sections shall be filed in the office of the Secretary of State, and thereupon the persons who have, or may, subscribed the same, and all persons who may, from time to time, become stockholders in such company, shall be a body politic and corporate, by the name stated in such articles of association, and shall be capable in law to make all contracts, acquire real and personal property, purchase, hold, convey, any and all real and personal property whatever necessary for the construction, completion, and maintenance of such railroad, and for the erection of all necessary buildings and yards, or places and appurtenances for the use of the same, and be capable of suing and being sued, and have a common, or corporate seal, and make and alter the same at pleasure, and generally to possess all the powers and privileges for the purpose of carrying on the business of the corporation, that private individuals and natural persons now enjoy. A copy of any articles of association filed in pursuance of this act, and certified to be a copy by the Secretary of State, or his deputy, shall, in all courts and places, be presumptive evidence of the incorporation of such company, and of the facts stated therein; and such a copy so certified, shall be kept in the office of the Secretary of the corporation, subject to examination during office hours by any person."

"Sec. 17. Every railroad corporation shall have power:

First.—To cause such examinations and surveys for the proposed railroad to be made as may be necessary to the selection of the most advantageous route for the railroad, and for such purpose, by their officers, agents and employees, to enter upon the lands, or waters, of any person, but subject to responsibility for all damages which they shall do thereto.

Second.—To receive, hold, take and convey, by deed, or otherwise, the same as a natural person might, or could, do, such voluntary grants, and donations of real estate, and other property of every description, as shall be made to it, to aid and encourage the construction, maintenance and accomodation of such railroad.

Seventh.—To purchase lands, timber, stone, gravel, or other materials to be used in the construction and maintenance of its road, or take them in the manner provided by this act; may change the line of its road, in whole, or in part, whenever a majority of the directors shall so determine, as is provided hereinafter; but no such change shall vary the general route of such road, as contemplated in the articles of association of such company."

Sec. 18. If, at any time, after the location of the line of such railroad, in whole, or in part, and the filing of the map thereof, as provided by this act, it shall appear to the directors of such company that the same may be improved, such directors may, from time to time, alter, or change, the line, in any manner they may think proper, and cause a new map to be filed in the office where the map showing the first location is filed and may thereupon take possession of the land embraced in such new location, that may be required for the construction and main-

tenance of such new road on such new line, either by agreement with the owner, or owners, of such lands, or by such proceedings as are authorized under the provisions of this act, and use and enjoy the same in place of the line for which the new is substituted; but nothing in this act shall be so construed as to confer any powers on such companies to so change their road as to avoid any point named in their articles of association, except as provided in section 17, subdivision 7, of this act."

"Sec. 40. It shall be lawful for two, or more, railroad companies to amalgamate and consolidate their capital stock, debts, property, assets and franchises in such manner as may be agreed upon by the board of directors of such companies so desiring to amalgamate and consolidate their interests; but no such amalgamation, or consolidation, shall take place without the written consent of three-fourths of the value of all stockholders in interest of each company, and no such amalgamation, or consolidation, shall, in any way, relieve such companies, or the stockholders thereof, from any and all just liabilities, and in case of such amalgamation, or consolidation, due notice of the same shall be given, by advertising, for one month, in at least one newspaper in each county, if there shall be one published therein, into, or through, which such roads shall run, and also for the same length of time, in one paper published in Sacramento, and two papers published in San Francisco, and when the consolidation and amalgamation is completed, a copy of the new articles or association shall be filed in the office of the Secretary of State. It shall be the duty of the railroad

company to make and maintain a good and sufficient fence on either, or both, sides of their property; and in case any company do not make and maintain such fence, if their engine, or cars, shall kill, maim or destroy, any cattle or other domestic animals, when they stray upon their line of road; where it passes through or alongside of, the property of the owner thereof, they shall pay to the owner, or owners, of such cattle, or other domestic animals, a fair market price for the same, unless the owner or owners, of the animal or animals so killed, maimed or destroyed, shall be negligent, or at fault. In any case where the railroad company have heretofore, or may hereafter, pay to the owner or owners, of the land through which, or alongside of which, their road is or may be located, an agreed price for making and maintaining such fence, or whenever the costs of such fence have been, or may be, included in the award of damages allowed and paid for the right of way for such railroad, such company shall be entirely relieved and exonerated from all claims or awards, of damages arising out of the killing, or maiming, any animals as aforesaid, in favor of all persons, or their successors, or assigns, who shall thus fail to construct and maintain such fence. And the owner, or owners, of such animals shall become responsible to the railroad company for any damage, or loss which may accrue to such company, from such animals being upon their railroad track, by reason of the nonconstruction of such fence by said owner, unless it can be proven that such loss, or damage, accrued by reason of the negligence of said company, its officers, agents, or employees."

"Sec. 43. Every railroad company in this state shall, within a reasonable time after their road shall be finally located, cause to be made a map and profile thereof, and the land taken and obtained for the use thereof, and the boundaries of the several counties through which said road may run, and file the same in the office of the Secretary of State; and also, like maps of the parts thereof located in different counties, and file the same in the office of the clerk of the county in which said parts of said road shall be, there to remain as of record forever. The said maps and profiles shall be certified by the chief engineer, the acting President, and Secretary of such company; and copies of the same so certified and filed as aforesaid, shall be kept in the office of the Secretary of the company, subject to examination by all parties interested."

Said corporation was formed for the purpose and with the corporate power, as stated in its articles of incorporation, of constructing, owning and maintaining a railroad from some point on the Bay of San Francisco, in the State of California, and to pass through the counties of Santa Clara, Monterey, San Luis Obispo, Tulare, Los Angeles and San Diego, to the town of San Diego, in said state; thence eastward, through said county of San Diego, to the eastern line of the State of California; there to connect with a contemplated railroad from the eastern line of the State of California to the Mississippi River.

Your orator further shows that on October 11th, 1870, under and by virtue of the said general laws of the State

of California, authorizing two or more railroad companies to consolidate and amalgamate their capital stock, debts, property, assets and franchises, said Southern Pacific Railroad Company, the San Francisco and San Jose Railroad Company, a railroad corporation then organized and existing under the laws of California, and the Santa Clara and Pajaro Valley Railroad Company, also a railroad corporation then organized and existing under the laws of California, did pretend to consolidate and amalgamate their capital stock, debts, property, assets and franchises making a different capital, issuing new stock and creating a new and different corporation under the name and style of the Southern Pacific Railroad Company.

On the 27th day of July, 1866, Congress passed an act entitled "An act granting lands to aid in the construction of a railroad and telegraph line from the states of Missouri and Arkansas to the Pacific Coast by the Southern Route," which was approved on that day. The said act is printed in the 14th volume of the United States Statutes at Large, at page 292, and sections 3, 4, 6, 8, 9, 11, 12, 13, 17, 18 and 20 of said act are hereinafter set forth.

On the 24th day of November, 1866, the board of directors of the said Southern Pacific Railroad Company, at a meeting held in the city of San Francisco, in the State of California, on that day, passed a resolution reciting the act last above entitled, and resolved to accept the same and the terms, conditions and impositions contained in said act, and accordingly, on the 30th day of November 1866, the secretary of said company transmitted to the Secretary of the Interior a certified copy of the said resolution of the board of directors, under the seal of the com-

pany, accepting the terms and conditions of said act of Congress of July 27, 1866, which certified copy was on the 27th day of December, 1866, duly filed with the Secretary of the Interior.

That on March 1, 1870, the legislature of California passed an act, entitled "An act relating to certificates of incorporation," which act was approved on said date; that said act is in the words and phrases as follows, to wit:

"Section 1. Any corporation now or hereafter organized under the laws of this State, may amend its articles of association, or certificate of incorporation, by a majority vote of the board of directors, or trustees, and by a vote or written assent of the stockholders representing at least two-thirds of the capital stock of such corporation; and a copy of the said articles of association or certificate of incorporation, as thus amended, duly certified to be correct by the president and secretary of the board of directors, or trustees of such corporation, shall be filed in the same office or offices, where the original articles or certificate are required by law to be filed; and from the time of filing such copy of the amended article or certificate, such corporation shall have the same powers, and it and the stockholders thereof shall be thereafter subject to the same liabilities as if such amendment had been embraced in the original articles or certificate; provided, that the time of the existence of such corporation shall not be thereby extended beyond the time fixed in the original articles or certificate; and provided further, that such original and amended articles or certificate shall, to-

gether, contain all the matters and things required by the law under which the original articles of association or certificate of incorporation were executed and filed; and provided further, that nothing herein contained shall be construed to cure or amend any defect existing in any original certificate of incorporation heretofore filed, by reason of the failure of such certificate to set forth the matters required by law to make the same valid as a certificate of incorporation at the time of the filing thereof; also provided, that unless the vote or written assent of all the stockholders has been obtained, then a notice of the intention to make such amendment shall first be advertised for sixty days, in some newspaper published in the town or county in which the principal place of business of said company is located; and the written protest of any one of said stockholders, or his duly authorized agent or attorney, whose assent has not been obtained, filed with the secretary of the said company, shall, unless withdrawn, be effectual to prevent the adoption of such amendment; provided, that nothing in this act shall be construed to authorize any corporation to diminish its capital stock."

"Section 2. This act shall take effect and be in force from and after its passage."

On April 4, 1870, the legislature of California passed an act as follows: "Whereas, by the provisions of a certain act of Congress of the United States of America, entitled 'An act granting lands to aid in the construction of a railroad and telegraph line from San Francisco to the eastern line of the State of California,' approved July

27, 1866, certain grants were made to and certain rights, privileges, powers and authority were vested in and conferred upon the Southern Pacific Railroad Company, a corporation duly organized and existing under the laws of the State of California; therefore, to enable the said company to more fully and completely comply with, and perform the requirements, provisions and conditions of the said act of Congress, and all other acts of Congress now in force, or which may hereafter be enacted, the State of California hereby consents to said act; and the said company, its successors and assigns are hereby authorized and empowered to change the line of its railroad so as to reach the eastern boundary line of the Sate of California by such route as the company shall determine to be the most practicable, and to file new and amendatory articles of association, and the right, power and privileges hereby granted to, conferred upon, and vested in them, to construct, maintain and operate, by steam or other power the said railroad and telegraph line mentioned in said act of Congress, hereby confirming to and vesting in the said company, its successors and assigns, all the rights, privileges, and franchises, power and authority conferred upon, granted to, or vested in said company by the said acts of Congress, and any act of Congress which may be hereafter enacted."

That on April 15, 1871, in pursuance of the said general acts of the legislature of California, approved March 1, 1870, the said Southern Pacific Railroad Company filed its amended articles of association, in the same office where the originals are required by law to be filed, which articles are as follows:

"Whereas, by an act of the legislature of the State of California, entitled 'An act relating to certificates of incorporation,' approved March 1, 1870, any corporation then organized, or thereafter to be organized under the laws of the State of California, is authorized and empowered to amend its articles of association, or certificate of incorporation, by a majority vote of the board of directors or trustees, and by a vote or written assent of the stockholders representing, at least, two-thirds of the capital stock of such corporation.

"And whereas, by a certain other act of the legislature of the State of California, entitled 'An act to aid in giving effect to an act of Congress, relating to the Southern Pacific Railroad Company,' approved April the 4th, 1870, to enable the said company to more fully and completely comply with, and perform the provisions requirements and conditions of an act of Congress of the United States of America, entitled 'An act granting lands to aid in the construction of a railroad and telegraph line from San Francisco to the eastern line of the State of California,' approved July 27, 1866, and of all other acts of Congress then in force, or which might thereafter be enacted, the said Southern Pacific Railroad Company, its successors and assigns, were authorized and empowered to change the line of its railroad so as to reach the eastern boundary line of the State of California, by such route as said company might determine to be most practicable, and to file new and amendatory articles of association.

"And whereas, by an act of Congress of the United States of America, entitled 'An act to incorporate Texas Pacific Railroad Company and aid in the construction of its road, and for other purposes,' approved March the 3d, 1871.

"The said Southern Pacific Railroad Company was authorized subject to the laws of California, to construct a line of railroad from a point at, or near Tehachapi Pass, by way of Los Angeles to the Texas Pacific Railroad, at or near the Colorado river, with the same grants, rights and privileges, and subject to the same limitations, restrictions and conditions as were granted to said Southern Pacific Railroad Company by an act of Congress entitled 'An act granting lands to aid in the construction of a railroad and telegraph line from the States of Missouri and Arkansas to the Pacific Coast,' approved July 27, 1866.

"And whereas, said Southern Pacific Railroad Company desires to secure to itself the grants, rights and privileges conferred upon it by said acts of the Congress of the United States, and to that end to amend and alter its articles of association, as provided in the foregoing acts of the legislature of the State of California, so as to include in its line of railroad and telegraph the line or route designated in the aforesaid act of Congress of March 3, 1871, to wit: The line from a point at, or near Tehachapi Pass, by way of Los Angeles to the Texas Pacific Railroad, at or near the Colorado river.

"And whereas, on the 11th day of April, 1871, at a meeting of the board of directors of said company, held

at San Francisco, the principal place of business of said company, it was determined by a unanimous vote of said board, that the articles of association of said company be amended as aforesaid.

"And whereas, at the same time and place, at a meeting of the stockholders of said company, at which stockholders of said company holding more than two-thirds of the capital stock of said company were present, and did vote unanimously in favor of amending the articles of association of said company,as aforesaid, and did also unanimously vote to increase the capital stock of said company to the sum of seventy millions of dollars, to meet the increased cost of the construction and equipment of said railroad.

"Now, therefore, the board of directors of said Southern Pacific Railroad do order and direct the articles of association of said company be amended so as to read as follows :

"ARTICLES OF ASSOCIATION, AMALGAMATION AND CONSOLIDATION.

"Made and executed on this the 11th day of October, A. D. 1870, by and between the San Francisco and San Jose Railroad Company, of the first part, the Santa Clara and Pajaro Valley Railroad Company, of the second part, the Southern Pacific Railroad Company, of the third part, and the California Southern Railroad Company, of the fourth part, witnesseth:

"That whereas, the said party of the first part was heretofore, to wit, on the 18th day of August, 1860, duly incorporated and organized under the laws of the State

of California, for the purpose of constructing, owning, maintaining and operating a railroad from the city of San Francisco, in the county of San Francisco, in said State, through said county and the counties of San Mateo and Santa Clara, to the city of San Jose, in said last-named county, a distance of forty-eight miles.

"And whereas, the said party of the second part was heretofore, to wit, on the 2d day of January, 1868, duly incorporated and organized under the laws of said State, for the purpose of constructing, owning, maintaining and operating a railroad from a point at or near the city of San Jose, in the county of Santa Clara and State aforesaid, connecting at said point with the railroad of the said party of the first part, and to pass thence to a point at or near the town of New Gilroy, in the same county, a distance of thirty miles.

"And whereas, the said party of the third part was heretofore, to wit, on the 2d day of December, 1865, duly incorporated and organized under the laws of said State, for the purpose of constructing, owning, maintaining and operating a railroad from some point on the Bay of San Francisco, in said State, and to pass through the counties of Santa Clara, Monterey, San Luis Obispo, Tulare, Kern, Los Angeles and San Diego, to the town of San Diego, in said State; thence eastward through the county of San Diego to the eastern boundary line of said State, a distance of seven hundred and twenty miles, as near as may be, there to connect with a contemplated railroad from said eastern boundary line of said State to the Mississippi river, and has

received large grants of land from the government of the United States to aid in the construction and equipment of said road

"And whereas, the said party of the fourth part was heretofore, to wit, on the 22d day of January, 1870, duly incorporated and organized under the laws of said State, for the purpose of constructing, owning and maintaining a railroad from a point at or near the town of Gilroy, in the county of Santa Clara, in said State, and to pass through the counties of Santa Clara, Santa Cruz and Monterey, to a point at or near the town of Salinas city in said last-named county, a distance of forty-five miles, as near as may be.

"And whereas, said parties believe a consolidation and amalgamation of their capital stocks, debts, properties, assets, roads, telegraphs, lands and franchises will be mutually advantageous."

"And whereas, more than three-fourths in value of all the stockholders in interest of each of said parties have consented, in writing, to such amalgamation and consolidation, upon the terms and conditions hereinafter set forth.

"Now, therefore, under and by virtue of the statute of the State of California, in such case made and provided, the said parties do hereby mutually covenant and agree, each with each and all the others, to the following articles, to wit:

"Article 1. Said parties do hereby amalgamate and consolidate themselves into a new corporation, under the name and style of the Southern Pacific Railroad

Company, which new corporation shall continue in existence for the period of fifty years from the date of these articles; and they do further consolidate and amalgamate their several capital stocks, debts, properties, assets, roads, telegraphs, lands, franchises, rights, titles, privileges, claims and demands of every kind whatsoever, as well in possession as in expectancy, at law or in equity, and do grant, convey and vest the same in said new corporation as fully as the same are now severally held and enjoyed by them, or either of them, subject, however, to all conditions, obligations, stipulations, contracts, agreements, liens, mortgages, encumbrances, claims and charges thereon, or in anywise affecting the same.

"Article 2. The object and purpose of said new corporation shall be to purchase, construct, own, maintain and operate a continuous line of railroad from the city of San Francisco, in the State of California, through the city and county of San Francisco, the counties of San Mateo, Santa Clara, Monterey, Fresno, Tulare, Kern, San Bernardino and San Diego, to some point on the Colorado river, in the southeastern part of the State of California, a distance of seven hundred and twenty miles, as near as may be; also a line of railroad from a point at or near Tehachapi Pass, by way of Los Angeles, to the Texas Pacific Railroad, at or near the Colorado river, a distance of three hundred and twenty-four miles, as near as may be; also a line of railroad from the town of Gilroy, in the county of Santa Clara, in said State, passing through said county, and the

counties of Santa Cruz and Monterey, to a point at or near Salinas City, in said last named county, a distance of forty-five miles, as near as may be, also such branches to said lines as the board of directors of said new corporation may hereafter consider advantageous to said corporation, and direct to be established.

"Article 3. The board of directors of said new corporation shall consist of seven persons, and the following named persons shall act as such directors until their successors shall have been duly elected, pursuant to the by-laws of said new corporation, hereafter to be adopted, viz.: Lloyd Tevis, Leland Stanford, Charles Crocker, C. P. Huntington, Mark Hopkins, Charles Mayne and Peter Donahue.

"Article 4. The capital stock of said new corporation shall be seventy million dollars, consisting of seven hundred thousand shares, of one hundred dollars each, that sum being the contemplated actual cost of said railroads including telegraph lines, rolling stock, motive power, shops depots, etc.

Article 5. Each stockholder of each of said party shall have the same number of shares of the capital stock of the new corporation which he now owns and holds of the capital stock of his respective company, upon the same terms and conditions, and shall be entitled to receive from said new corporation certificates therefor, where the same has been fully paid up, upon the surrender of the certificates now held by him, and where the same has not been fully paid up, he shall receive such other

evidence of his ownership as the board of directors of said new corporation shall direct, upon the surrender of such evidence of his ownership of such unpaid stock of his respective company as he may now hold.

"Article 6. Said new corporation shall assume and perform all the contracts, agreements, covenants, duties and obligations, of what kind soever, of each of said parties, and shall pay and discharge all debts, claims and demands existing against either and all of said parties; but nothing herein contained shall release the said parties or either of them, or their stockholders or any of them, from any of their just liabilities.

"In testimony whereof, the said Southern Pacific Railroad Company, by its board of directors, has caused these articles to be signed and countersigned by its president and secretary, and its corporate seal to be hereunto affixed, on this the eleventh (11) day of April, 1871.

"SOUTHERN PACIFIC RAILROAD COMPANY,
By CHARLES CROCKER,
President.

[Seal] J. L. WILLCUTT,
Secretary."

And your orator alleges that all the provisions of said law were fully complied with in order to give effect to said new articles of association and of said amendments.

Your orator further alleges that on the 12th day of August, 1873, under and by virtue solely of the law of the State of California on May 20, 1861, before referred

to, authorizing the amalgamation and consolidation of two or more railroad companies, the said Southern Pacific Railroad Company organized in 1870 as aforesaid, and the Southern Pacific Branch Railroad Company, each organized and then existing railroad companies under and by virtue of the laws of California, did pretend to amalgamate and consolidate their capital stock, debts, property assets and franchises, creating a new capital stock and issuing new certificates of stock and canceling the old ones and creating a new and different corporation by the name and style of the Southern Pacific Railroad Company, a copy of which new articles of association and incorporation are hereto attached marked Exhibit "A-B," and all the provisions of said law were fully complied with in order to give effect to said new articles of incorporation.

Your orator further shows the Court that on July 27, 1866, Congress passed an act entitled "An act granting lands to aid in the construction of a railroad and telegraph line from the States of Missouri and Arkansas to the Pacific Coast, by the Southern route." To which said act your orator has heretofore referred, and that sections 3, 4, 6, 9, 11, 12, 17, 18 and 20 of said act are as follows:

"Sec. 3. And be it further enacted, that there be, and hereby is, granted to the Atlantic and Pacific Railroad Company, its successors and assigns, for the purpose of aiding in the contruction of said railroad and telegraph line to the Pacific Coast, and to secure the safe and speedy transportation of the mails, troops, munitions of

war and public stores over the route of said line of railway and its branches, every alternate section of public land, not mineral, designated by odd numbers, to the amount of twenty alternate sections per mile, on each side of said railroad line, as said company may adopt, through the territories of the United States, and ten alternate sections of land per mile on each side of said railroad whenever it passes through any State; and whenever on the line thereof, the United States have full title, not reserved, sold, granted or otherwise appropriated, and free from pre-emption or other claims or rights, at the time the line of said road is designated by a plat thereof, filed in the office of the commissioner of the general land office, and whenever, prior to said time, any of said sections, or parts of sections, shall have been granted, sold, reserved, occupied by homestead settlers or pre-empted, or otherwise disposed of, other lands shall be selected by said company in lieu thereof, under the direction of the Secretary of the Interior, in alternate sections, and designated by odd numbers, not more than ten miles beyond the limits of said alternate sections, and not including the reserved numbers. Provided, that if said route shall be found upon the line of any other railroad route, to aid in the construction of which lands have heretofore been granted by the United States, as far as the routes are upon the same general line, the amount of land heretofore granted shall be deducted from the amount granted by this act. Provided further: That the railroad company receiving the previous grant of land may assign

their interest in said 'Atlantic and Pacific Railroad Company,' or may consolidate, confederate and associate with said company, upon the terms named in the first and seventeenth sections of this act. Provided, further: That all mineral lands be, and the same are hereby, excluded from the operations of this act, and in lieu thereof a like quantity of unoccupied and unappropriated agricultural lands in odd-numbered sections nearest to the line of said road, and within twenty miles thereof, may be selected as above provided. And further provided: That the word 'mineral,' when it occurs in this act, shall not be held to include iron or coal. And provided further: That no money shall be drawn from the Treasury of the United States to aid in the construction of the said 'Atlantic and Pacific Railway.'

"Sec. 4. And be it further enacted: That whenever said Atlantic and Pacific Railroad Company shall have twenty-five consecutive miles of any portion of said railroad and telegraph line ready for the services contemplated, the President of the United States shall appoint three commissioners to examine the same, who shall be paid a reasonable compensation for their services by the company, to be determined by the Secretary of the Interior and if it shall appear that twenty-five consecutive miles of said road and telegraph line have been completed in a good, substantial and workmanlike manner, as in all other respects required by this act, the commissioners shall so report, under oath, to the President of the United States, and patents of land, as aforesaid, shall be issued to said company, con-

firming to said company the right and title to said lands situate opposite to and coterminous with said completed section of said road. And from time to time, whenever twenty-five additional consecutive miles shall have been constructed, completed and in readiness as aforesaid, and verified by said commissioners to the President of the United States, then patents shall be issued to said company, conveying the additional sections of lands as aforeosaid, and so on as fast as every twenty-five miles of said road is completed as aforesaid.

"Sec. 6. And be it further enacted: That the President of the United States shall cause the lands to be surveyed for forty miles in width on both sides of the entire line of said road after the general route shall be fixed, and as fast as may be required by the construction of said railroad; and the old sections of land hereby granted shall not be liable to sale or entry, or preemption, before or after they are surveyed, except by said company, as provided in this act, but the provisions of the act of September, 1841, granting preemption rights, and the acts amendatory thereof, and of the act entitled 'An act to secure homesteads to actual settlers on the public domain,' approved May 20, 1862, shall be and the same are hereby extended to all other lands on the line of said road when surveyed, excepting those hereby granted to said company.

"Sec. 9. And be it further enacted: That the United States make the several conditional grants herein, and that the said Atlantic and Pacific Railroad Company

accept the same, upon the further condition that if the said company make any breach of the conditions hereof, and allow the same to continue for upwards of one year, then, in such case, at any time thereafter, the United States may do any and all acts and things which may be needful and necessary to insure a speedy completion of the said road.

"Sec. 11. And be it further enacted: That said Atlantic and Pacific Railroad, or any part thereof, shall be a post route and military road, subject to the use of the United States for postal, military, naval and all other Goverment service, and also subject to such regulations as Congress may impose restricting the charges for such Government transportation.

"Sec. 12. And be it further enacted: That the acceptance of the terms, conditions and impositions of this Act by the said Atlantic and Pacific Railroad Company shall be signified in writing, under the corporate seal of said company, duly executed pursuant to the direction of its board of directors first had and obtained, which acceptance shall be made within two years after the passage of this act, and not afterwards, and shall be deposited in the office of the Secretary of the Interior.

"Sec. 17. Be it further enacted: That the said company is authorized to accept to its own use any grant, donation, loan, power, franchise, aid, or assistance which may be granted to, or conferred on said company by the Congress of the United States, by the Legislature of any State, or by any corporation, person or

persons, or by any Indian tribe or nation, through whose reservation the road herein provided for may pass, and said corporation is authorized to hold and enjoy any such grant, donation, loan, power, franchise, aid or assistance, to its own use for the purpose aforesaid; provided, that any such grant or donation, power, aid or assistance, from any Indian tribe or nation, shall be subject to the approval of the President of the United States.

"Sec. 18. And be it further enacted: That the Southern Pacific Railroad, a company incorporated under the laws of the State of California, is hereby authorized to connect with the said Atlantic and Pacific Railroad, formed under this act, at such point—near the boundary line of the State of California—as they shall deem most suitable for a railroad line to San Francisco; and shall have a uniform gauge and rate of freight or fare with said road; and in consideration thereof, to aid in its construction, shall have similar grants of land, subject to all the conditions and limitations herein provided; and shall be required to construct its road on the like regulations, as to time and manner, with the Atlantic and Pacific Railroad herein provided for.

"Sec. 20. And be it further enacted: That the better to accomplish the object of this act, namely, to promote the public interest and welfare by the construction of said railroad and telegraph line, and keeping the same in working order, and to secure to the Government at all times, but particularly in time of war, the use and benefits of the same for postal, military and other pur-

poses, Congress may, at any time having due regard for the rights of said Atlantic and Pacific Railroad Company, add to, alter, amend or repeal this act.

"Approved July 27, 1866."

Your orator alleges that by and pursuant to said act of Congress, the Atlantic and Pacific Railroad Company was created and duly organized, and on November 23, 1866, within the time and in the manner provided in said act, accepted said grant, and did designate the line of its route from Springfield, Missouri, to the Pacific by maps and plats thereof which it filed in the office of the commissioner of the general land office in manner following to wit:

On or about March 9, 1872, said company filed in the office of the commissioner of the general land office maps designating the line of its route and showing the general features of the country and vicinity as follows:

First.—From San Francisco to San Miguel Mission in California.

Second.—Map of its route from San Miguel Mission via Santa Barbara and San Buena Ventura to a point in township 2 south, range 17 west, San Bernardino base and meridian in California.

Third.—Map of its route from said point last mentioned to a point in township 7 north, range 7 east, San Bernardino base and meridian in California.

Fourth.—Map of its route from said point last named to the Colorado River and thereafter on or about March, 1872, said company filed in said office as aforesaid its several other maps, designating its route from

said point last named to Springfield in the State of Missouri, making all together a continuous line designating its entire route and showing the general features of the country from said town of Springfield, Missouri, by way of the points named in said acts of Congress of July 27, 1866, to the Pacific at San Buenaventura, and from there to San Francisco, and in the manner provided in said act, and such designation was accepted by the United States.

Your orator alleges that said several parts of its map, filed as aforesaid, made and constituted the entire route or line of said Atlantic and Pacific Railroad Company, fully designating the whole thereof.

Your orator alleges that on March 9, 1872, and on April 22, 1872, the Secretary of the Interior and the commissioner of the general land office respectively ordered all the odd sections of land within thirty miles on each side of said designated route of said Atlantic and Pacific Railroad Company reserved from sale and withdrawn.

Your orator alleges that said Atlantic and Pacific Railroad Company did construct and complete a portion of its road west of Springfield, Missouri, in the time and manner required by said act, but did not at any time construct or complete any railroad west of the Colorado River.

Your orator further shows that by the act of Congress approved July 6, 1886, entitled: "An act to forfeit the lands granted to the Atlantic and Pacific Railroad Company to aid in the construction of a railroad and telgraph line from the States of Missouri and Ar-

kansas to the Pacific Coast, and to restore the same to settlement and for other purposes." All the lands and rights to lands in California theretofore granted and conferred upon said Atlantic and Pacific Railroad Company were forfeited, resumed and restored to entry for noncompletion of that portion of said railroad to have been constructed in California.

Your orator alleges that the Southern Pacific Railroad Company, which is defendant herein, is not the same Southern Pacific Railroad Company which was organized and incorporated under said articles of amalgamation and consolidation, dated October 11th, 1870, and amended April 11th, 1871, as heretofore set forth, but is the now existing Southern Pacific Railroad Company created as aforesaid.

Your orator further shows the Court that, by section 23 of an act of Congress approved March 3, 1871, entitled "An act to incorporate the Texas & Pacific Railroad Company, and to aid in the construction of its road and for other purposes," it was provided as follows:

"That for the purpose of connecting the Texas and Pacific Railroad with the city of San Francisco, the Southern Pacific Railroad Company of California is hereby authorized (subject to the laws of California) to construct a line of railroad from a point at or near Tehachapi Pass, by way of Los Angeles, to the Texas Pacific Railroad at or near the Colorado River, with the same rights, grants and privileges, and subject to the same limitations, restrictions and conditions as were granted to said Southern Pacific Railroad Company of California by the act of July 27, 1866.

"Provided, however, that this section shall in no way affect or impair the rights, present or prospective, of the Atlantic and Pacific Railroad Company or any other railroad company."

Said Southern Pacific Railroad Company, the corporation which existed on April 3, 1871, as heretofore shown, pretended to accept said grant on April 3, 1871, and did on that day designate the line of its said road by a plat thereof, which it filed in the office of the commissioner of the general land office, and thereupon the Secretary of the Interior ordered all the public lands in odd sections within 30 miles of such route, to which no right or claim had attached, to be withdrawn from market and reserved.

And your orator alleges that the Southern Pacific Railroad Company which was organized and created on August 12th, 1873, by the pretended articles of amalgamation and consolidation of said several railroad companies as heretofore set forth did construct and complete a railroad from Tehachapi Pass by way of Los Angeles to the Colorado River in the manner and within the time prescribed in said act of Congress, in which the Southern Pacific Railroad Company, therein named, was authorized and empowered to do; and thereafter the Commissioners appointed under said act for that purpose did unlawfully make and file their alleged acceptance of the whole of said railroad by sections. And there was not, and is not now, any railroad or part thereof constructed or completed under said act or be-

tween said points otherwise than as aforesaid.

Your orator alleges that the lands hereinafter described were acquired from Mexico by your orator in 1846 and confirmed by the Treaty of Guadalupe Hidalgo in 1848, and were then and at all time since have been public lands of the United States, not mineral, to which the United States have at all times had full title and have not been patented, reserved, sold, granted, appropriated and free from all claims and rights and occupancy, except as otherwise shown in this bill of complaint.

The said tracts being described as follows, to wit: North of base line and west of San Bernardino meridian, Los Angeles District, township one, range eight, —— west half of section thirty-one, containing three hundred and twenty-one acres and sixty hundredths of an acre—all of section twenty-nine containing six hundred and forty acres. The south half of section thirty-three, containing three hundred and twenty acres. All of section thirty-five, containing six hundred and forty acres. North of base line and west of San Bernardino principal meridian, California, township one, range nine, the north half of the southwest quarter of section twenty-seven, containing eighty acres.

Your orator further shows that the general routes of said Atlantic and Pacific Railroad Company and of said Southern Pacific Railroad Company under said act of March 3, 1871, as said routes were located as aforesaid, cross each other in the State of California as will

more particularly appear from the annexed map marked Exhibit "B-B."

Your orator further shows: That on the south side of said route of the Atlantic and Pacific Railroad Company within 30 miles of said route but also within 20 miles of the pretended designated route of the Southern Pacific Railroad Company, there was not on July 27th, 1866, nor on March 12th, 1872, nor on April 3d, 1871, and is not now enough public land in the odd sections to equal in amount ten (10) alternate sections per mile of the line of road of said Atlantic and Pacific Railroad Company, within such limits, for that prior to said date of July 27, 1866, the Mexican Government and the United States had sold, granted, reserved, and otherwise disposed of so great a quantity of land in those limits.

Your orator further alleges that all of the said lands before described are situated on the south side of the said designated route of the Atlantic and Pacific Railroad Company more than 20 miles but less than 30 miles therefrom, but are less than 20 miles from the said pretended designated route of said Southern Pacific Railroad Company.

Your orator further shows that on or about March 27, 1837, Ignacio Palomares and Ricardo Vejar presented a petition to Juan B. Alvarado, Governor of Upper California under the Mexican Government, for a grant for the place known by the name of San Jose.

Thereupon said matter was properly investigated and such grant was duly made by Juan B. Alvarado,

then Governor ad interim of California, on April 15, 1837, to said Palomares and Vejar for the place called San Jose, in conformity with the plat attached to the petition and within the boundaries therein expressed.

Thereafter, and on or about December 16, 1839, one Louis Arenas and said Ignacio Palomares and Ricardo Vejar presented their petition to the Prefect of the District for a grant for the land called San Jose, ceded by the decree of April 15, 1837, and one additional league of grazing land.

Thereupon, upon investigating such matter, and on March 14, 1840, Juan B. Alvarado, then Constitutional Governor of the Department of the Californias, granted said land so petitioned for by said Arenas, Palomares, and Vejar, and as fully shown by the diseno referred to in their said petition; and thereafter said grant was duly confirmed by the Departmental Assembly of Upper California, and juridical possession was given for said land to the said Luis Arenas, Ignacio Palomares and Ricardo Vejar; a copy of said grant and map being hereto attached marked Exhibit "C-C," and a translation marked "A-C."

Your orator further shows that on or about September, 1852, Henry Dalton, Ignacio Palomares and Ricardo Vejar each severally filed his claim for confirmation of one-third of the place called San Jose, granted to them as aforesaid, with the board of land commissioners, pursuant to the act of Congress of March 3, 1851, entitled "An act to ascertain and settle the private land claims in the State of California," and there-

after, and on or about January 31, 1854, the said board of land commissioners rendered and entered its three several decrees therein, confirming to each of said claimants the land applied for and described as aforesaid.

Thereafter the United States duly appealed from each of said decrees of confirmation to the United States District Court for the Southern District of California, which said Court did, upon the trials and hearings of said appeals, and on or about December term, 1854, of said Court, render and enter its separate decrees therein in each case and affirming the three said decrees of the board of land commissioners, confirming to said Henry Dalton, Ricardo Vejar, and Ignacio Palomares, and to each, "an equal undivided one-third part of the lands of San Jose granted by Juan B. Alvarado, Governor of California, to Ignacio Palomares and Ricardo Vejar, on April 15, 1837, and regranted by said Governor, on March 14, 1840, to said Palomares and Vejar and to Louis Arenas, as described in the grant first mentioned and the map to which the same refers and which boundaries fully appear from the act of judicial possession" described as follows: "Commencing at the foot of a black willow tree which was taken for a corner, and between the limbs of which a dry stick was placed in the form of a cross; thence westerly nine thousand seven hundred (9,700) varas to the foot of the hills called 'Las Lomas de la Puente,' taking for a landmark a large walnut tree on the slope of a small hill on the side of the road which passes from the said

'San Jose' to the Puente, making a cut (caldura) on one of the limbs with a hatchet; thence northerly ten thousand four hundred (10,400) varas to the creek (arroyo) of San Jose opposite a high hill where a large oak was taken as a boundary in which was placed the head of a beef and some of its limbs chopped; thence easterly ten thousand six hundred (10,600) varas to the creek (arroyo) of San Antonio, taking for a landmark two young cotton woods which stand near each other, on the bark of which the crosses were made; thence southeasterly nine thousand seven hundred (9,700) varas to the place of beginning."

Your orator further shows that each of said decrees of said District Court became final, by the dismissal of the appeal which had been taken therefrom.

Your orator further shows that the surveyor general of the United States for California, having the power and authority under the law in that behalf to locate, to survey, to reserve and to segregate from the public domain all Mexican grants, and sufficient lands to satisfy such grants, did in the year 1868, so locate, survey and segregate said San Jose Grant, and did so locate, survey and segregate sufficient land to satisfy such grant, and included in such survey and Rancho as a part thereof all the lands in suit herein as hereafter set forth.

That pursuant to such authority and under the direction of and in behalf of said surveyor general, one George H. Thompson, deputy United States surveyor, did, in August, 1868, so survey, locate, and segregate such Rancho, including therein the amount of land to satisfy such Ran-

cho, and including therein as a part thereof all the lands in suit herein; and thereafter, in the same year, such survey was duly approved by said surveyor general and such survey was thereafter spread upon the records and plats of the general land office, and of the office of said surveyor general.

Your orator alleges that a certain alleged survey was made of said San Jose Rancho by Henry Hancock, a United States deputy surveyor, in October and November, 1858, which was approved by the United States surveyor general for California, J. W. Mandeville, January 4, 1860, but up to September 18, 1868, said Hancock survey had not become complete or final or effective because it had not been published nor advertised nor approved by the commissioner of the general land office and was wholly inoperative as a legal survey or segregation of the land.

In the meantime, and before said Hancock survey had become operative or legal, the act of Congress approved July 23, 1868, entitled "An act to quiet land titles in California," had become operative, which said act provided as follows:

Sec. 8. "That in all cases where a claim to land by virtue of a right or title derived from the Mexican or Spanish authorities has been finally confirmed and a survey and plat thereof shall not have been requested within ten months—it shall be the duty of the surveyor general of the United States for California, as soon as practicable after the expiration of ten months from the passage of this act—to cause the lines of the public surveys to be extended over such land, and he shall set off in full

satisfaction of such grant and according to the lines of the public surveys the quantity of land confined in such final decree as nearly as can be done in accordance with such decree, and all lands not included in such grant as so set off, shall be subject to the general land laws of the United States."

And your orator alleges that there was no such request by such claimants for a survey ever made or filed, nor did they ever deposit in the United States District Court any money to pay for such survey, nor for a plat thereof.

Your orator alleges that after the said Suveyor General had approved said Thompson survey of August, 1868, under said act of July 23, 1866, and after it had become final under said act, without being advertised and without the approval of the commissioner of the general land office, and in the year 1869, the said surveyor general caused said Hancock survey to be advertised as provided in the act of Congress, approved July 1, 1864, but said Hancock survey was never approved by the commissioner of the general land office as required by said act of July 1, 1864, or any other act, and never became effective.

Your orator further shows that on or about Nov. 13, 1869, the said surveyor general transmitted to the commissioner of the general land office the said alleged Hancock survey of 1858, and said Thompson survey of 1868, together with a report in reference thereto.

Your orator alleges that on June 17, 1871, the commissioner of the general land office duly considered said report and said Thompson survey and said alleged Hancock survey and did order both to be set aside and a new sur-

vey made, and up to said date of June 17, 1871, said Thompson survey was *sub judice*, and reserved the land therein, a certified copy of said commissioner's decision of June 17, 1871, being hereto attached, marked Exhibit "B-C", and made a part hereof, together with ten (10) papers referred to therein, each marked "D."

Your orator alleges that the lands in suit herein were not embraced in said alleged Hancock survey of 1858, but were all embraced in the boundaries to the grant of Alvarado, Governor, to said Palomares, Vejar and Arenas of 1840, heretofore referred to, and were claimed as part thereof.

Your orator further shows that subsequent to June 17, 1871, the said surveyor general for California made another survey of said San Jose Rancho and upon which the United States did, on January 20, 1875, issue its patent therefor to said Henry Dalton, Ricardo Vejar and Ignacio Palomares, as finally surveyed, which patent was duly accepted by said claimants, and which said patent and final survey did not include any of the lands in suit herein.

Your orator further shows that on March 29, 1876, April 4, 1879, and December 27, 1883, respectively, the commissioner of the general land office did, inadvertently and without any authority of law, issue three certain patents for the above described lands to the Southern Pacific Railroad Company and did procure the signature of the President of the United States thereto and of the Recorder of the general land office, who signed said patents without any authority of law. Copies of said pretended

patents are hereto annexed and made a part hereof, being marked Exhibits "A-B" and "C."

Your orator alleges upon information and belief that the defendants herein claim an interest in the lands in suit herein, described in said pretended patents under and through said pretended patents, and not otherwise, but the nature and extent of such claims are unknown to your orator, and your orator asks that defendants each answer fully disclosing the nature and extent thereof.

Your orator alleges that defendants and neither of them have any title or interest in or to said lands, legal or equitable, for that said pretended patents under which defendants solely claim title were issued inadvertently, without authority, and were at their inception and still are each void and inoperative to pass title, and that said lands were never granted to said Southern Pacific Railroad company, defendants herein, but are still owned by the plaintiff.

Your orator further shows that the amount in controversy herein exceeds the sum or value of $5,000, exclusive of interest and costs.

Your orator further shows that on the 16th day of August, 1887, the Secretary of the Interior of the United States, on behalf of the plaintiff and in accordance with law, did demand from the defendant, the Southern Pacific Railroad Company, a relinquishment to the United States of its claim to all the lands described in said pretended patents and a return of said patents, which the railroad company refused and still refuses to so relinquish to the plaintiff and refuses to return said patents.

Your orator refers to the several acts of Congress relating to public lands and to private land claims, to the several acts and Joint Resolutions of Congress relating to the Atlantic and Pacific Railroad Company, the Southern Pacific Railroad Company, the Texas and Pacific Railroad Company, and to the surveys, plats and public records of the office of the surveyor general for California, and of the general land office, relating to the several grants to said railroad companies, and to said Mexican grant of said San Jose Rancho.

In tender consideration whereof, and for as much as the plaintiff is remediless at and by the strict rules of the common law, and can only be relieved in a Court of Equity, your orator prays that the defendants be required to bring said pretended patents into court, and that they may each be canceled by the Court, and be decreed to be null and void and of no effect.

Your orator further prays that its title to said lands, described in said pretended patents may be quieted, and that the defendants, and each of them, be forever enjoined from asserting or claiming any right or title thereto adverse to the plaintiff, and such other and further relief as the Court may deem equitable in the premises.

May it please your Honors to grant unto your orator a writ of subpoena issuing out of and under the seal of this Honorable Court to be directed to the Southern Pacific Railroad Company, the Southern Pacific Company of Kentucky, Lewis H. Bixey, H. J. Parks, Clara E. Cumberland, Thomas S. Oldham, O. Morgan, The Pomona Land and Water Company, L. L. Bradbury, H. M. Crampton,

Carlton Seaves, Stoddard Jess, Elias Fink, Charles N. Peck, S. W. Moore, George D. Ripley, C. C. Johnson, William S. Henderson, Frank Johnson, George Rhores, Cassie L. Foss and Joseph Hinkell, commanding them each on a certain day and under a certain penalty therein to be inserted to be and appear before your Honors and then and there to answer the premises and further to stand to and abide such order and decree therein as shall be agreeable to equity and good conscience, and your orator will ever pray.

W. H. H. MILLER,
Attorney General of the United States.

JOSEPH H. CALL,
Special Assistant United States Attorney, Southern District of California, and of Counsel for Plaintiff.

[Endorsed]: No. 67, 68 and 69. In the Circuit Court of the United States, 9th Circuit, Southern Dist., of California. The U. S. of America, vs. S. P. Railroad Co., et al. Second Amended Bill. Filed November 22d, 1889. Wm. M. Van Dyke, Clerk. Jos. H. Call, Sol. for Plff.

In the Circuit Court of the United States, Ninth Circuit, Southern District of California.

Nos. 67, 68 and 69. Consolidated by Order of the Court.

THE UNITED STATES OF AMERICA,

Plaintiff,

vs.

THE SOUTHERN PACIFIC RAILROAD COMPANY, THE SOUTHERN PACIFIC COMPANY OF KENTUCKY, LEWIS H. BIXBY, H. J. PARKS, CLARA E. CUMBERLAND, THOMAS S. OLDHAM, O. MORGAN, THE POMONA LAND AND WATER COMPANY, L. L. BRADBURY, H. M. CRAMPTON, CARLTON SEAVES, STODDARD JESS, ELIAS FINK, CHARLES N. PECK, S. W. MOORE, GEORGE D. RIPLEY, C. C. JOHNSON, WILLIAM S. HENDERSON, FRANK JOHNSON, GEORGE RHORES, CASSIE L. FOSS, AND JOSEPH HINKELL,

Defendants.

Answer of the Southern Pacific Railroad Company in Consolidated Case No. 68.

And now comes the Southern Pacific Railroad Company, one of the defendants in the above-entitled cause, and for answer to the second amended bill filed herein by W. H. H. Miller, Attorney-General of the United States, on leave of the Court on the 22d day of November, A. D., 1889, against it and the other defendants above named, and making answer to said bill and to so much thereof as

it is advised material, and now, and at all times hereafter, saving and reserving unto itself all benefit and advantage of exception which may be had or taken to the many errors, uncertainties and other imperfections in the said bill contained, for answer thereunto or so much and such parts thereof as this defendant is advised is material or necessary for it to make answer unto, answering says:

I.

It admits that on or about the 2d day of December, 1865, a corporation was organized under the laws of the State of California, by the name and style of the Southern Pacific Railroad Company, and under a general law of said state, approved May 20, 1861, entitled "An act to provide for the incorporation of railroad companies and the management of the affairs thereof, and other matters relating thereto," and this defendant admits the sections two (2), three (3), seventeen (17), eighteen (18), forty (40) and forty-three (43) as set forth in said bill.

This defendant admits that the said corporation, "The Southern Pacific Railroad Company," was formed for the purpose and with the corporate powers stated in said bill.

II.

This defendant admits that on the 11th day of October, A. D., 1870, under and by virtue of the general laws of the State of California, the Southern Pacific Railroad Company, the San Francisco and San Jose Railroad Company, the Santa Clara and Pajaro Valley Railroad Company (with the California Southern Railroad Company),

corporations organized under the laws of California, were consolidated and amalgamated under the name of the Southern Pacific Railroad Company.

III.

This defendant admits that on the 27th day of July, 1866, Congress passed an act entitled "An act granting lands to aid in the construction of a railroad and telegraph line from the States of Missouri and Arkansas to the Pacific Coast," which was approved on that day, and is found in the 14th volume of the United States Statutes, p. 292, and following, and admits that the said corporation the Southern Pacific Railroad Company, accepted the terms, conditions and impositions of said act, and filed a duly certified copy of said acceptance in the office of the Secretary of the Interior, at Washington City, within the time required by law.

IV.

This defendant admits that on March 1, 1870, the legislature of the State of California passed an act "Relating to certificates of Incorporation," which was approved on said date, and that the said act is correctly set forth in the plaintiff's bill.

And also admits that on the 4th of April, 1870, the legislature of the State of California, passed "An act to aid in giving effect to an act of Congress relating to the Southern Pacific Railroad Company," and that said act is correctly quoted and set forth in the plaintiff's said bill.

And the defendant also admits that the said Southern Pacific Railroad Company, in pursuance and under au-

thority of said enactment of the legislature of the State of California, approved March 1, 1870, filed in the office of the Secretary of State of said State of California, on the 15th day of April, A. D., 1871, amended articles of association and incorporation, which said amended articles it admits are correctly set forth in the plaintiff's said bill, and it also admits that the provisions of the laws were fully complied with in order to give effect to said amended articles of association.

V.

This defendant admits that on or about the 12th day of August, A. D., 1873, under and by virtue of the laws of the State of California, the Southern Pacific Railroad Company, and the Southern Pacific Branch Railroad Company, each organized and then existing as railroad corporations under the laws of California, did amalgamate and consolidate themselves into a corporation under the name and style of the Southern Pacific Railroad Company, and that a true copy of the articles of association and incorporation are found in Exhibits "A" and "B" attached to said amended bill, and admits also that all the provisions of law have been complied with in order to give effect to said articles of amalgamation and consolidation.

VI.

This defendant admits that the Congress of the United States passed an act which was approved on the 27th day of July A. D. 1866, entitled "An act granting lands to aid in the construction of a railroad and telegraph line from the states of Missouri and Arkansas to the Pacific Coast," and that sections three (3), four (4), six

(6), nine (9), eleven (11), twelve (12), seventeen (17), eighteen (18) and twenty (20) are correctly quoted and set forth in the said bill.

VII.

This defendant admits that by and under said last mentioned act of Congress, the Atlantic and Pacific Railroad Company was created and organized, and did duly accept the provisions of the said law within the time and in the manner provided in said act, but it denies that said Atlantic and Pacific Railroad Company did designate the line of its route from Springfield, in the State of Missouri, to the Pacific Coast, as required by said act.

This defendant denies that on the 9th March, 1872, or at or about any such time, the Atlantic and Pacific Railroad Company filed in the office of the commissioner of the general land office, maps designating the line of route, or otherwise in accordance with the law, and denies that on or about the 9th March, 1872, said Atlantic and Pacific Railroad Company filed four maps in the office of the commissioner of the general land office, as stated in said bill. Said company filed two maps and claimed that they were filed for the purpose of locating parts or fragments of a line for its road in the State of California, but the defendant denies that said maps constituted a valid location of said road in California. Certified copies of said maps are annexed to the answer heretofore filed in this suit by this defendant and marked Exhibit "A," Nos. 1 and 2, which, with the indorsements thereon, are now herein referred

to and made part of this answer; and this defendant says that said railroad was not located or attempted to be located on or about March 9, 1872, or at any such time in California, either in whole or in part otherwise than appears aforesaid by said maps. This defendant denies that the Atlantic and Pacific Railroad Company, by or through the filing of said maps, acquired the right to any lands of the United States lying opposite to the lines or route marked on said maps, and denies that said company acquired the right to select any public lands along said routes or lines as "other lands" in lieu of sections within twenty miles that had "been granted, sold, reserved, occupied by homestead settlers or pre-empted or otherwise disposed of" by the United States.

These maps were sent to the general land office by the Secretary of the Interior with a letter dated March 9, 1872, of which a certified copy is annexed to said answer heretofore filed, marked Exhibit "B."

This defendant says that the lands mentioned in the amended bill herin lie opposite to the line of route marked on the said map designated in said letter as No. 2 of a portion of the proposed road of the Atlantic and Pacific Railroad Company, that is, a piece of road within the State of California. "From a point on the western boundary line of Los Angeles County, California, to a point in township seven (7) north, range seven (7) east, of San Bernardino meridian in said state."

Neither, when filed in March, 1872, nor at any such time, did it appear that said map represented any part of a line that was or was intended to be conjoined to

any other part located before that time for the Atlantic and Pacific Railroad.

VIII.

Further answering, this defendant says that the Atlantic and Pacific Railroad Company afterwards, viz.: on the 13th day of August, 1872, filed in the Department of the Interior, two other maps which it claimed were intended to designate the line of other fragments or portions of its railroad in California. Certified copies of said maps, and of the letter of the Secretary of the Interior of April 16, 1874, in respect thereto, are annexed to the answer filed hertofore in this suit by this defendant, marked Exhibit "C," Nos. 1 and 2, and are now herein referred to and made a part of this answer. And this defendant denies that said maps constituted a valid location of the parts or fractions of road therein described, and denies that the four maps hereinbefore mentioned of our several parts of the road constituted a valid location of the said Atlantic and Pacific Railroad in California. And it denies that the said Atlantic and Pacific Railroad was ever in any other wise lawfully located in the state of California. The grant of lands by the said act of Congress of July 27, 1866, hereinbefore mentioned was made to aid in the construction of a railroad "Beginning at or near the town of Springfield, in the State of Missouri, thence to the western boundary line of said State, and thence by the most eligible railroad route as shall be determined by said company to a point on the Canadian River; thence to the town of Albuquerque on the River Del Norte, and

thence by the way of the Agua Frio or other suitable pass, to the head waters of the Colorado Chiquito, and thence along the thirty-fifth parallel of latitude, as near as may be found most suitable for a railway route, to the Colorado River, at such point as may be selected by said company for crossing; thence, by the most practicable and eligible route to the Pacific." (14 Stat. 292.) And the defendant says that there is nothing in or upon said maps to identify the same as the line of road mentioned in the said act of Congress.

And this defendant says: that it was further provided by said act as follows, that is to say:

"Sec. 18. And be it further enacted, that the Southern Pacific Railroad, a company incorporated under the laws of the State of California, is hereby authorized to connect with the said Atlantic and Pacific Railroad, formed under this act, at such point, near the boundary line of the State of California, as they shall deem most suitable for a railroad line to San Francisco, and shall have a uniform gauge and rate of freight or fare with said road; and in consideration thereof, to aid in its construction, shall have similar grants of land, subject to all the conditions and limitations herein provided, and shall be required to construct its road on the like regulations, as to time and manner, with the Atlantic and Pacific Railroad herein provided for."

And that the construction of a railroad from the Colorado river to San Francisco, was expressly relegated and appropriated by this defendant, and the said Atlantic and Pacific Railroad Company was never authorized

to construct any such line of railroad or to acquire any lands by reason of or in respect of the construction, or proposed construction, of any such line.

IX.

And this defendant denies that on or about March, 1872, the said Atlantic and Pacific Company filed in the office of the commissioner of the general land office, maps designating its route from the Colorado river to Springfield, in the state of Missouri, and denies that said maps made altogether the line of railroad from Springfield, in the State of Missouri, to the Pacific Coast, which was provided for and required by said act of Congress of July 27, 1866, to be constructed and completed by the said Atlantic and Pacific Railroad Company, and denies that the several parts of its map filed, made and constituted the whole of its line as provided for in said act of Congress. The said parts of its map when taken together, showed a line terminating at San Francisco, which was not the terminus provided for by said act of Congress.

X.

This defendant denies that on March 9, 1872, and April 22, 1872, or at any such times the secretary of the Interior and the commissioner of the general land office ordered all the odd sections of land within thirty miles on each side of the designated route of the said Atlantic and Pacific Railroad Company reserved from sale and withdrawn.

About that time the commissioner of the general land office, viz., on the 22d April, 1872, ordered lands with-

drawn for 30 miles on each side of the parts of lines of route attempted to be located March 9, 1872, by the two maps hereinbefore mentioned as filed March 9, 1872. The orders of the commissioners were addressed to the register and receiver of the United States land office at San Bernardino, Los Angeles and Visalia, and were substantially as shown by the certified copy of the commissioner's letter of said date to the officers at Los Angeles, hereto annexed, marked "Q," and made part of this answer. The defendant denies that said orders of April 22, 1872, had any effect whatever upon the rights and grants of this defendant, and here refers to the fact that they were intended only to take effect upon public lands not reserved, sold, granted or otherwise appropriated at the time of filing said maps, to wit, March 12 (9th?), 1872.

This defendant avers that the lands involved in this suit had previously, on the 3d April, 1871, by the filing of the map of definite location of the defendant's railroad, been duly reserved from sale by and under the said twenty-third section of the act of Congress of March 3, 1871, and the 6th section of the act of Congress of July 27th, 1866, which said sections are quoted in the bill of complaint herein, and avers also that said lands had been duly withdrawn from market and appropriated for the use of this defendant by the order of the commissioner of the general land office to the register and receiver of the United States land office at Los Angeles, issued April 21, 1871, a copy of which is hereto annexed, marked "R," and made part of this answer.

This defendant admits that said Atlantic and Pacific Railroad Company did construct and complete a portion of its road west of Springfield, Missouri, in the time and manner required by said act, but did not at any time construct or complete any railroad west of the Colorado River.

XI.

This defendant admits the enactment of a law of the United States, approved July 6, 1886, entitled "An act to forfeit the lands granted to the Atlantic and Pacific Railroad Company to aid in the construction of a railroad and a telegraph line from the states of Missouri and Arkansas to the Pacific Coast, and to restore the same to settlement, and for other purposes," and that thereby the lands and rights to lands in California theretofore granted and conferred upon said Atlantic and Pacific Railroad Company were forfeited, but denied that they were thereby "resumed" and "restored to entry," and because of the manifest insufficiency of the statement of the provisions of said law in the bill of the plaintiff, the entire statute is now referred to by this defendant. Stat. at Large, vol. 24, p. 123.

XII.

Traversing the allegation in the plaintiff's bill, that the Southern Pacific Railroad Company, the defendant herein, is not the same Southern Pacific Railroad Company which was organized and incorporated under articles of amalgamation and consolidation dated October 11, 1870, and amended April 11, 1871, as in said bill set forth, this defendant says that it is the same company,

and that the changes and amendments made from time to time in its articles and organization have been made in accordance with the laws of the State of California.

This defendant avers that it is the same Southern Pacific Company that is mentioned in the act of Congress of 25th June, 1868, 15th volume of Statutes, p. 79, and in the act of 25th July, 1868, 15th volume of Statutes, p. 187, and in the Joint Resolution of Congress of June 28, 1870, 10th volume U. S. Statutes, p. 382, and in the 23d section of the act of March 3, 1871, 16th U. S. Stat., p. 579, which is as follows:

"Sec. 23. That, for the purpose of connecting the Texas Pacific Railroad with the city of San Francisco, the Southern Pacific Railroad Company of California is hereby authorized (subject to the laws of California) to construct a line of railroad from a point at or near Tehachapi Pass, by way of Los Angeles, to the Texas Pacific Railroad, at or near the Colorado river, with the same rights, grants and privileges, and subject to the same limitations, restrictions and conditions as were granted to said Southern Pacific Railroad Company of California by the act of July 27, 1866. Provided, however, that this section shall in no way affect or impair the rights, present or prospective, of the Atlantic and Pacific Railroad Company, or any other railroad company." Approved March 3, 1871.

This defendant avers that, on the 3d April, 1871, it designated the line of its said railroad, as described in said section 23, by a map thereof filed in the office of the commissioner of the general land office, and there-

upon the said commissioner ordered all the public lands in odd sections within thirty miles of such route to be withdrawn from market. Certified copy of the map filed by this defendant in the office of the commissioner of the general land office is annexed to the answer heretofore filed by this defendant, marked Exhibit "D," and the same is now referred to and made part of this answer.

This defendant avers that it is the same railroad company that constructed the railroad provided for in the said 23d section of said act of Congress of March 3, 1871, and that it fully constructed and completed its road according to said act, and the construction thereof has been accepted and approved by the President of the United States, construction of the last mile of said road having been accepted by President Hayes, on the 23d of January, 1878.

This defendant hereto annexes, and makes part of this answer, certified copies of five several reports of the Secretary of the Interior to the President of the United States, and of the indorsements thereon made by the President upon the same, marked Exhibit "S," No. 1, No. 2, No. 3, No. 4, and No. 5, and this defendant denies that the commissioners appointed for that purpose did "unlawfully make and file their alleged acceptance of the whole of said railroad by sections."

The commissioners, in accordance with law, made and filed their reports, and the same were accepted by the Secretary of the Interior and the President of the United States, and this action of the Secretary and Pres-

dent is binding upon the United States, and its validity cannot be called in question in this action.

This defendant denies that the following lands at all times since their acquisition from Mexico, "have been public lands of the United States," and denies that the United States has full title thereto at this time, said lands being described as follows: North of the base line and west of San Bernardino meridian in township one (1), range eight (8):

The Q^2, of Sec. 31	321.60 acres
All of Sec. 29	640.00 acres
The S^2 of Sec. 33	320.00 acres
All of Sec. 35	640.00 acres
In township one (1), range nine (9):	
The N^2 of the SW^4 Sec. 27	80.00
	2,001.60

This defendant admits that the line attempted to be located for the Atlantic and Pacific Railroad in California crosses the line of the Southern Pacific Railroad, located under the act of March 3, 1871, but denied that the defendant's location was upon the same general line as that of the Atlantic and Pacific Railroad Company, it denies that any valid location of the Atlantic and Pacific Railroad was or could be on the same general line as the authorized and located and constructed line of this defendant. It denies that the lands involved in this suit are situated opposite to portions of said routes which are upon the same general line and, to support such denial, refers to the certified copy of the location of the route of the Southern Pacific Railroad of

California, made under the act of March 3, 1871, and filed in the office of the commissioner of the general land office April 3, 1871, with the letter of the Acting Secretary of the Interior of that date, annexed to the answer heretofore filed, marked Exhibit "D," Nos. 1 and 2, and now referred to and made part of this answer.

And this defendant alleges that when its line of route was located on the 3d day of April, 1871, it was demonstrated and found that said route was not upon the line of the Atlantic and Pacific Railroad, or upon the line of any other railroad route, to aid in the construction of which lands had been granted by the United States; and that under and by virtue of said act of March 3, 1871, and the map of location filed on the 3d day of April, 1871, the lands described in said patents were reserved for and appropriated to this defendant, whose title thereto has become perfect and complete by the construction of its road as prescribed in said Act.

That the said Atlantic and Pacific Railroad Company's pretended line was not located until subsequent to the year 1871; that when sought or pretended to be located, it was and was found to be on a wholly unauthorized route, not prescribed or permitted under any act of Congress in relation to or affecting said Atlantic and Pacific Railroad Company,

This defendant admits that on the south side of the pretended location of the Atlantic and Pacific road, and within 30 miles thereof, but also within 20 miles of the location of the Southern Pacific Railroad, there was not on April 3, 1871, and is not now, enough public land in the odd sections to equal ten (10) alternate sections per

mile on each side of the pretended location of the line of said Atlantic and Pacific Railroad Company, within such limits, and this defendant admits that the above-described tracts of land are situated more than 20 miles and less than 30 miles from the line of pretended location of the Atlantic and Pacific Railroad, and less than 20 miles from the said located line of the Southern Pacific Railroad.

This defendant avers that said tracts of land have been granted, by the said 23d section of the act of March 3, 1871, to it, The Southern Pacific Railroad Company.

XIII.

Further answering, this defendant admits that on or about March 14, 1840, a grant of lands was made by Juan B. Alvarado, the Governor of the Department of the Californias, to Louis Arenas, Ignacio Palomares and Ricardo Vejar for the place or land called San Jose, with an additional league of grazing land, and that under the act of Congress of March 3, 1851, (9 stat. 633), said lands were duly confirmed by the United States District Court for the Southern District of California, in the years 1855, 1856 and 1857, one undivided third thereof to Henry Dalton, one undivided third part to Ignacio Palomares and one-third part to Ricardo Vejar, by separate degrees in cases No. 121, 122 and 123, on the docket of said Court; and this defendant admits that said confirmations were entered with like terms and descriptions of said lands in the decrees of confirmation, and that the boundaries of the Rancho or place called San Jose, so confirmed, as

stated in the amended bill of complaint, are substantially correct.

And this defendant admits that said decrees of confirmation became final, and alleges that the decree in No. 121 became final April 4, 1857, by dismissal of the appeal that had been taken therefrom.

XIV.

This defendant, further answering, denies that the Suveyor General of the United States for California did, in the year 1868, "under the laws in that behalf," locate, survey and segregate said San Jose grant so as to satisfy said grant, and denies that said suveyor general had legal authority in 1868, to survey and set off said lands from the lands of the United States.

This defendant denies that a certain survey, made by one George H. Thompson in August, 1868, was made with due authority of law, or under legal and valid instructions issued to him for that purpose by the United States surveyor general for California. And this defendant denies that the said survey by Thompson was "duly approved" by the surveyor general, and denies that the same was spread upon the records and plats of the general land office. The said survey, made by said Thompson, included a large quantity of public lands of the United States that had never been granted by the Mexican authorities to said Arenas, Palomares and Vejar, and, among other public lands, the tracts above described were wrongfully included in said Thompson survey.

XV.

This defendant avers that a regular survey of said San Jose Rancho was made by Henry Hancock, United States deputy surveyor, in October and November, 1858, which was approved by the United States surveyor general for California, J. W. Mandeville, January 4, 1860; the plat of said survey was advertised, in accordance with section one of the act of Congress approved June 14, 1860, in regard to the survey and location of confirmed private land claims in California (12 Stat. 33), as appears from the certified copy of the plat of said survey and indorsements thereon, which are annexed to the answer of this defendant, heretofore filed, marked Exhibit "E," which are now referred to and made part of this answer; and the said survey, as approved by said Surveyor General Mandeville, had been officially transmitted to the commissioner of the general land office at Washington, and in August, 1868, was pending for examination by the said commissioner of the general land office, and for patent thereon, under said act of Congress of June 14, 1860, and the defendant says that the United States surveyor general for California had not jurisdiction under these circumstances to make another survey of said Rancho San Jose in August, 1868, when the pretended survey was made by George H. Thompson.

XVI.

This defendant says that the survey approved by J. W. Mandeville, surveyor general, was under examination by the commissioner of the general land office, with a view to the issuing of a patent thereon, when the surreptitious

survey by said Thompson was made, without authority of law or instruction from the said commissioner. The plaintiff has had notice of the illegal character of Thompson's work, as appears by the letters of the commissioner of the general land office, addressed to the United States surveyor for California upon this subject, dated May 6, 1868, and May 8, 1869, of which certified copies are annexed to the previous answer of this defendant in this suit, marked Exhibit "F," Nos. 1 and 2, and which are now referred to and made part of this answer.

And it is shown by said letter of May 8, 1869, that a fraudulent attempt was made, in or through the surveyor general's office at San Francisco, to obtain a patent on said Thompson survey for 15,000 acres or more of lands of the United States, by annexing a false certificate to the Thompson plat, certifying that it had been advertised under the act of Congress of July 1, 1864 (11 Stat. 352), when in fact it was Hancock's plat of survey that had been advertised. The said Thompson survey was not authorized by law or instructions, and was a fraud upon the United States. It was not proper evidence of the out boundaries or the true boundaries of the San Jose Rancho. It was not the regular or authentic work of the United States officers; and to support these allegations this defendant refers to the certified copies of the letters of the commissioner of the general land office above mentioned, dated May 6, 1867, and May 8, 1869.

The said survey made by Hancock and approved by the surveyor general on the 4th of January, 1860, did not include any, or any part of the lands involved in this suit.

Said survey was the existing segregation of the San Jose Rancho, from the public lands, made in accordance with the Statutes of the United States, and was presumptively valid at the time the grant of public land was made to this defendant March 3, 1871, and at the time the said grant was definitely located, viz. April 3, 1871.

The lands involved in this suit situated in township one (1) north, range eight (8) west, San Bernardino meridian, were surveyed as public lands in the year 1865, as appears by the certified copy of the plat of survey marked Exhibit "G," annexed to the answer heretofore filed by this defendant, which is now herein referred to and made part of this answer.

XVII.

This defendant denies that said plat of survey by Henry Hancock, approved January 4, 1860, had not become complete and final when said Thompson survey was made. referring to the act of Congress of 23d July, 1866, "To quiet land titles in California," U. S. Stat., vol. 14, p. 218, and to section eight (8) of said law cited in this amended bill, this decision says that said law had no application and has now no application to the San Jose Rancho, or the survey thereof. The said Thompson survey was not made under, or in conformity to, said act, but, as shown on the plat thereof, was made in contravention thereof. Instead of setting off to the claimants the quantity of land confirmed (the decrees of confirmation, as shown in the bill of complaint, were by boundaries and not by quantity), according to the lines of the public surveys, as di-

rected in aid section 8, his survey extended to places and objects outside of the boundaries.

The Thompson survey was not sanctioned by the law of 1886. On the contrary, it appears from the letters of the commissioner of the general land office of May 6, 1868, and May 8, 1869, and the final decision of the Secretary of the Interior of September 20, 1872, that said survey was rejected as not authorized by any law, and that the final survey of the Rancho San Jose was made under the act of July 1, 1864.

This defendant denies that up to June 17, 1871, the Thompson survey was sub judice, and denies that the lands involved in this suit were embraced in the boundaries of the Mexican Grant to Palomares, Vejar and Arenas.

This defendant admits that the final survey of the confirmations of the said San Jose Rancho did not include any of the tracts in controversy in this cause.

This defendant avers that the grant of San Jose was a grant for a tract by boundaries, and that said boundaries were finally determined and described by and in the said separate decrees confirming the said rancho in undivided third parts to said Dalton, Palomares and Vejar; and when said decrees became final in the years 1857 and 1858, the boundaires were settled, and that thereafter the only duty of the surveyor general was to ascertain and survey these boundaries.

The final survey was made pursuant to a decision of the Secretary of the Interior upon the true boundaries of the grant, dated September 20th, 1872, of which a certified

copy is annexed to the answer of this defendant hereinbefore filed, marked Exhibit "H," and is now referred to and made part of this answer. This final survey did not include any of the lands involved in this suit, and after the decrees of confirmation became final, which was prior to the grant of lands by the United States to this defendant, there were no lands within the San Jose Rancho, except such as have been included in the final survey thereof.

XVIII.

This defendant admits that, under date of March 29, 1876, April 4, 1879, and December 27, 1883, the patents were issued to this defendant for the lands hereinabove described, but denied that said patents were issued inadvertently of without authority. On the contrary, this defendant avers that said patents were issued with due deliberation and in strict conformity with the law, and that the signatures of the President of the United States and the Recorder of the general land office thereto were affixed fairly and properly and under due authority of law. This defendant here refers to the Exhibits 1, Nos. 1 and 2, annexed to its answer heretofore filed, and makes the same part of this answer.

When the grant of lands was made to this defendant March 3, 1871, and its grant was located April 3, 1871, all the lands involved in this case were public lands of the United States.

XIX.

This defendant admits that the value of the lands demanded in this suit exceeds the sum of five thousand dollars, and denies that the Secretary of the Interior of the

United States demanded on the 16th August, 1887, a relinquishment from this defendant of its claim to all the lands involved in this suit. Said demand related to and included only about fourteen hundred and one and 60/100 (1401.60) acres of the lands hereinbefore mentioned, which will more fully appear from the certified copy of the letter making the demand annexed to the answer of the defendant heretofore filed, marked Exhibit "K," and here referred to and made part of this answer.

The defendant admits that it has refused to comply with said demand.

The respondent denies all and all manner of unlawful combination and confederacy wherewith it is by the said bill charged without this, that any other matter, cause, or thing in the complainant's said bill of complaint contained, material or necessary for this defendant to make answer unto, and not herein and hereby well and sufficiently answered, confessed, traversed, avoided or denied, is true, to the knowledge or belief of this defendant; all of which matters and things this defendant is ready and willing to aver, maintain and prove as this Honorable Court shall direct; and prays to be hence dismissed with its reasonable costs and charges in this behalf most wrongfully sustained.

JOSEPH D. REDDING,

Solicitor and of Counsel for the Respondent, the Southern Pacific Railroad Company.

CREED HAYMOND, R.

Of Counsel for Respondent.

I hereby certify that I am solicitor and of counsel for the respondent, the Southern Pacific Railroad Company, in the foregoing cause, and that, in my opinion the foregoing answer is well founded in point of law.

JOSEPH D. REDDING,
Solicitor and of Counsel for Respondent.

United States of America,
District of California. }

I, J. L. Willcutt being duly sworn, depose and say: That I am the secretary of the Southern Pacific Railroad Company, one of the respondents in the above-entitled cause; that I have read the foregoing answer and know the contents thereof, and the same is true as I verily believe.

J. L. WILLCUTT.

Subscribed and sworn to before me this 23d day of December, 1889.

E. B. RYAN,
[Seal] Notary Public.

[Endorsed]: No. 68. Circuit Court of the United States, Ninth Circuit, Southern District of California. United States of America, vs. S. P. R. R. Co., et al. Answer of S. P. R. R. Co. Service hereof admitted by copy January 4, 1890. Joseph H. Call, Special Asst. U. S. Atty. Filed Dec. 30th, 1889. Wm. M. Van Dyke, Clerk, By E. H. Owen, Deputy Clerk. Joseph D. Redding, Solicitor for Respondent, S. P. R. R. Co., No. 8 Montgomery Street, San Francisco, Cal.

In the Circuit Court of the United States, Southern District of California.

Consolidated Numbers 67, 68 and 69.

THE UNITED STATES OF AMERICA,
vs.
SOUTHERN PACIFIC RAILROAD COMPANY, et al.

Replication to Answer of Southern Pacific R. R. Co.

This replicant saving and reserving to himself ever and at all times hereafter, all and all manner of benefit and advantage of exception which may be had or taken to the manifold insufficiencies of the said answers of said defendant, Southern Pacific Railroad Company, for replication thereunto, says that he will aver, maintain and prove his bill of complaint to be true, certain and sufficient in law to be answered unto and that the said answer of said defendant and each, are uncertain, untrue and insufficient to be replied unto by the replicant without this: That any other matter or thing whatsoever in said answers contained material or effectual to be replied unto, confessed and avoided, traversed or denied, is true; all of which matters and things this replicant is and will be ready to aver, maintain and prove, as this Honorable Court shall direct, and humbly prays as in and by his said bill has already prayed.

JOSEPH H. CALL,
Special Assistant U. S. Attorney and of Counsel for Plaintiff.

[Endorsed]: Consolidated Nos. 67, 68 and 69. United States of America vs. Southern Pacific Railroad Company, et al. Replication to Answer of So. Pac. R. R. Co. Copy served by mail on Jos. D. Redding, Sol. for said Defendant, January 24, 1890. Joseph H. Call, Special Asst. U. S. Atty. Filed January 25th, 1890. Wm. M. Van Dyke, Clerk. Joseph H. Call, Sol. and of Counsel for Plaintiff.

Mandate.

UNITED STATES OF AMERICA—ss.

The President of the United States of America, to the Honorable the Judges of the Circuit Court [Seal] of the United States for the Southern District of California. Greeting:

Whereas, lately in the Circuit Court of the United States for the Southern District of California before you, or some of you, in a cause between The United States of America, complainant, and The Southern Pacific Railroad Company, The Southern Pacific Company of Kentucky, Lewis H. Bixby, H. J. Parks, Clara E. Cumberland, Thomas S. Oldham, O. Morgan, The Pomona Land and Water Company, L. L. Bradbury, H. M. Crampton, Carlton Seaves, Stoddard Jess, Elias Fink, Charles N. Peck, S. W. Moore, George D. Ripley, C. C. Johnson, William S. Henderson, Frank Johnson, George Rhores, Cassie L. Foss and Joseph Hinkell, defendants, wherein the decree of the said Circuit Court, entered in said cause on the 6th day of March, A. D. 1891, is in the following words, viz.:

"This cause having hertofore been brought to a hear-

ing upon the pleadings and proofs, and having been argued by Joseph H. Call, Esq., special assistant United States attorney for the Southern District of California, of counsel for the said complainants, and by Joseph D. Redding, Esq., J. A. Anderson, Esq., and Edwin Baxter, Esq., counsel for said defendants, and having thereupon been submitted to the court for its consideration and decision, and the court, after due deliberation thereon, having ordered that the complainants' second amended bill of complaint herein be dismissed—

It is therefore ordered, adjudged and decreed that the said second amended bill of complaint of the said complainants, the United States of America be, and the same is hereby, dismissed.

Los Angeles, March 6th, 1891.

ROSS,
District Judge.

Decree entered and recorded March 6th, 1891.

WM. M. VAN DYKE,
Clerk."

—as by the inspection of the transcript of the record of the said Circuit Court, which was brought into the Supreme Court of the United States by virtue of an appeal, agreeably to the act of Congress, in such case made and provided, fully and at large appears.

And whereas, in the present term of October, in the year of our Lord, one thousand eight hundred and ninety-two, the said cause came on to be heard before the said Supreme Court, on the said transcript of record, and was argued by counsel:

On consideration whereof, it is now here ordered, adjudged and decreed by this Court that the decree of the said Circuit Court in this cause be, and the same is hereby, reversed.

And it is further ordered that this cause be, and the same is hereby, remanded to the said Circuit Court with directions to enter a decree in favor of the plaintiff for the relief sought.

December 12, 1892.

You, therefore, are hereby commanded that such further proceedings be had in said cause, in conformity with the opinion and decree of this Court as according to right and justice, and the laws of the United States, ought to be had, the said appeal notwithstanding.

Witness, the Honorable MELVILLE W. FULLER, Chief Justice of the United States, the 23d day of March, in the year of our Lord one thousand eight hundred and ninety-three.

JAMES H. McKENNEY,

Clerk of the Supreme Court of the United States.

[Endorsed]: Supreme Court of the United States. No. 863. October Term, 1892. The United States vs. The Southern Pacific Railroad Co., et al. Mandate. Filed Apr. 4, 1893. Wm. M. Van Dyke, Clerk.

In the United States Circuit Court, Southern District of California, Ninth Circuit.

(Consolidated Numbers 67, 68 and 69.)

UNITED STATES OF AMERICA,
Complainant,

vs.

THE SOUTHERN PACIFIC RAILROAD COMPANY (a Corporation), THE SOUTHERN PACIFIC COMPANY OF KENTUCKY (a Corporation), LEWIS H. BIXBY, H. J. PARKS, CLARA E. CUMBERLAND, THOMAS S. OLDHAM, O. MORGAN, THE POMONA LAND AND WATER COMPANY (a Corporation), L. L. BRADBURY, H. M. CRAMPTON, CARLTON SEAVES, STODDARD JESS, ELIAS FINK, CHARLES N. PECK, S. W. MOORE, GEORGE D. RIPLEY, C. C. JOHNSON, WILLIAM S. HENDERSON, FRANK JOHNSON, GEORGE RHORES, CASSIE L. FOSS and JOSEPH HINKELL,
Defendants.

No. 68.

Decree.

This cause came on to be further heard at this term, and was argued by counsel; and thereupon, upon consideration thereof, and pursuant to the mandate of the Supreme Court heretofore entered of record herein,

It is ordered, adjudged and decreed by the Court that the United States is the owner by absolute title in fee simple of the following described lands, to wit:

The west one-half (½) of section thirty-one (31), all of section twenty-nine (29), the south half of section thirty-three, (33), all of section thirty-five (35), township one (1) north, range eight (8) west, the north half (½) of the southwest one-fourth (¼) of section twenty-seven (27), township one (1) north, range nine (9) west, San Bernardino base and meridian, California.

It is further ordered, adjudged and decreed that those three certain patents from the United States to defendant Southern Pacific Railroad Company, dated March 29, 1876, April 4, 1879, and December 27, 1883, respectively, be and hereby are annulled and vacated and decreed to be void in so far as said patents, or either of them, affect or include the lands hereinbefore particularly described.

Provided, that this decree shall not affect any settlement right, or right of occupancy of defendant, Joseph Hinkell to the southeast quarter (¼) section thirty-three (33), township one (1) north, range eight (8) west, San Bernardino base and meridian, under any settlement law of the United States.

And it is further ordered, adjudged and decreed that the United States have and recover their proper costs to be taxed. Cost $1723.85.

ROSS,
District Judge.

Decree entered and recorded April 27th, 1893.

WM. M. VAN DYKE,
Clerk.

[Endorsed]: No. 68. In the United States Circuit Court, Southern District of California. United States vs. Southern Pacific Railroad Co., et al. Decree. Filed Apr. 27, 1893. Wm. M. Van Dyke, Clerk. Joseph H. Call, Special Ass't. U. S. Att'y.

Clerk's Certificate to Judgment-Roll.

I, Wm. M. Van Dyke, clerk of the Circuit Court of the United States, for the Southern District of California, do hereby certify the foregoing 58 typewritten pages, numbered from 1 to 58, both inclusive, to be a full, true and correct copy of the following parts of the record in the cause entitled, The United States of America, Complainants, vs. Southern Pacific Railroad Company, et al., Defendants Numbers 67, 68 and 69, consolidated by order of the Court viz:

Amended bill, filed November 22, 1889; answer of defendants filed December 30, 1889; replication, filed January 25, 1890; Mandate of Supreme Court, filed in Circuit Court April 4, 1893; and final decree, filed April 27, 1893, as the same appear on file and of record in my office in said cause.

Attest my hand and the seal of said Circuit Court, this 14th day of March, A. D. 1900.

[Seal] WM. M. VAN DYKE,
Clerk.

[Endorsed]: No. 67, 68 and 69. U. S. Circuit Court, Ninth Circuit Southern District of California. The United States of America vs. Southern Pacific Railroad Company, et al. Certified Copy of Parts of Record.

Plaintiff's Exhibit "D."

In the Circuit Court of the United States, Ninth Circuit, Southern District of California.

IN EQUITY.

THE UNITED STATES OF AMERICA,
Plaintiff,
vs.
THE SOUTHERN PACIFIC RAILROAD COMPANY, and D. O. MILLS and GARRIT L. LANSING, Trustees, and the CITY BRICK COMPANY,
Defendants.

Bill of Complaint.

To the Judges of the Circuit Court of the United States, for the Southern District of California:

The United States of America, by the Attorney General thereof, brings this its bill against the Southern Pacific Railroad Company, a corporation organized and existing under and by virtue of the laws of the State of California, D. O. Mills and Garrit L. Lansing trustees, and the City Brick Company, a corporation organized and existing under and by virtue of the general laws of California, each citizens of the State of California; and thereupon your orator shows that the following described land was acquired by the United States of America from Mexico in the year 1846, and confirmed

by treaty of Guadalupe Hidalgo in the year 1848 and was then and ever since has been public land of the United States, and during all said times your orator was and still is the absolute owner of said land, by title in fee simple described as follows, to wit:

All the sections of land designated by odd numbers in townships 3 and 4 north, ranges 5, 6 and 7 west; township 1 north, ranges 16, 17 and 18 west; townships 6 and south ¾ of township 7 north, ranges 11, 12, 13, 14, 15, 16, 17, 18 and 19 west;

Also all the sections of land designated by odd numbers as shown by the public surveys embraced within the townships from number 2 north to number 5 north, both inclusive, and ranges from number 8 west to number 18 west, both inclusive (except sections 23 and 35, in township 4 north, range 15 west; and except sections 1, 11 and 13, in township 3 north, range 15 west);

Also the unsurveyed lands within said area which will be designated as odd-numbered sections when the public surveys according to the laws of the United States shall be extended over such townships, all surveyed by San Bernardino Base and Meridian, State of California.

Your orator further shows that by the act of Congress approved July 27, 1866, entitled "An act granting lands to aid in the construction of a railroad and telegraph line from the States of Missouri and Arkansas to the Pacific Coast," Congress incorporated the Atlantic and Pacific Railroad Company and granted to said company in aid of the construction of such railroad, a large amount of lands in the State of California and

other States and Territories, and to which said act your orator refers. (See U. S. Statutes, Vol. 14, page 292.)

Section 3 of said act provides as follows:

"That there be and hereby is granted to the Atlantic and Pacific Railroad Company, its successors and assigns, for the purpose of aiding in the construction of said railroad and telegraph line to the Pacific Coast, and to secure the safe and speedy transportation of mails, troops, munitions of war and public stores, over the route of said line of railway and its branches, every alternate section of public land not mineral designated by odd numbers, to the amount of twenty alternate sections per mile on each side of said railroad line, as said company may adopt, through the territories of the United States, and ten alternate sections of land per mile on each side of said railroad whenever it passes through any State and whenever on the line thereof the United States have full title, not reserved, sold, granted or otherwise appropriated, and free from pre-emption or other claims, or rights, at the time the line of said road is designated, by a plat thereof filed in the office of the commissioner of the general land office, and whenever prior to said time any of said sections or parts of sections shall have been granted, sold, reserved, occupied by homestead settlers or pre-empted, or otherwise disposed of, other lands shall be selected by said company in lieu thereof, under the direction of the Secretary of the Interior, in alternate sections, and designated by odd numbers, not more than ten miles beyond the limits of said alternate sections, and not including

the reserved numbers; provided, that if said route shall be found upon the line of any other railroad route, to aid in the construction of which lands have been heretofore granted by the United States, as far as the routes are upon the same general line, the amount of land heretofore granted shall be deducted from the amount granted by this act."

And Section 18 provides as follows:

"Sec. 18. That the Southern Pacific Railroad, a company incorporated under the laws of the State of California, is hereby authorized to connect with the said Atlantic and Pacific Railroad, formed under this act, at such point near the boundary line of the State of California as they shall deem most suitable for a railroad line to San Francisco, and shall have a uniform gauge and rate of freight or fare with said road, and in consideration thereof, to aid in its construction, shall have similar grants of land subject to all the conditions and limitations herein provided, and shall be required to construct its road on the like regulations as to time and manner with the Atlantic and Pacific Railroad herein provided for."

Your orator further shows that said Atlantic and Pacific Railroad Company duly accepted said grant and proceeded to construct said road, and did locate on the ground and designate upon a plat or map the whole of said line of railroad under said act, from Springfield, Missouri, by way of the points and places named in said act, and in the time and manner provided in said act, to the Pacific Ocean; and on or about ———,

1866, did file such plat in the office of the commissioner of the general land office, and which designation and location was approved by the Secretary of the Interior at that time, and all the odd sections of public lands on each side of said road, for thirty miles, were thereupon withdrawn from market and reserved from sale.

Your orator further shows the Court that, by section 23 of an act of Congress approved March 3, 1871, (See U. S. Stats. Vol. 16, p. 573), entitled "An act to incorporate the Texas & Pacific Railroad Company, and to aid in the construction of its road and for other purposes," it was provided as follows:

"That for the purpose of connecting the Texas and Pacific Railroad with the city of San Francisco, the Southern Pacific Railroad Company of California is hereby authorized (subject to the laws of California) to construct a line of railroad from a point at or near Tehachapi Pass, by way of Los Angeles, to the Texas Pacific Railroad at or near the Colorado River, with the same rights, grants and privileges, and subject to the same limitations, restrictions and conditions as were granted to said Southern Pacific Railroad Company of California, by the act of July 27, 1866.

"Provided, however, that this section shall in no way affect or impair the rights, present or prospective, of the Atlantic and Pacific Railroad Company or any other railroad company."

Said Southern Pacific Railroad Company which then existed, accepted said grant, and on April 3, 1871, did designate the line of its said road by a plat thereof

which it on that day filed in the office of the commissioner of the general land office.

Your orator further shows that, by the act of Congress approved July 6, 1886, entitled "An act to forfeit the lands granted to the Atlantic and Pacific Railroad Company to aid in the construction of a railroad and telegraph line from the States of Missouri and Arkansas to the Pacific Coast, and to restore the same to settlement and for other purposes," all the lands and rights to lands in California theretofore granted and conferred upon said Atlantic and Pacific Railroad Company were forfeited, resumed and restored to the public domain for noncompletion of that portion of said railroad to have been completed in California, no part of said road having been constructed in California.

Your orator alleges that, on December 2, 1865, a corporation was organized under the laws of the State of California by the name and style of The Southern Pacific Railroad Company, and under a general law thereof, approved May 20, 1861, entitled "An act to provide for the incorporation of railroad companies and the management of the affairs thereof, and other matters relating thereto," with the corporate name of the Southern Pacific Railroad Company. Said act is printed in the Statutes of California, 1861, at page 607, and to which said act your orator refers.

Said corporation was formed for the purpose and with the corporate power, as stated in its articles of incorporation, of constructing, owning and maintaining a railroad from some point on the Bay of San Francisco, in

the State of California, and to pass through the counties of Santa Clara, Monterey, San Luis Obispo, Tulare, Los Angeles, and San Diego, to the town of San Diego, in said state; thence eastward, through said county of San Diego, to the eastern line of the State of California; there to connect with a contemplated railroad from the eastern line of the State of California to the Mississippi River.

Your orator further shows that on October 11th, 1870, under and by virtue solely of the said general laws of the State of California, authorizing two or more railroad companies to consolidate and amalgamate their capital stock, debts, property, assets and franchises, said Southern Pacific Railroad Company, the San Francisco and San Jose Railroad Company, a railroad corporation then organized and existing under the laws of California, and the Santa Clara and Pajaro Valley Railroad Company, also a railroad corporation then organized and existing under the laws of California, did, without any authority from the United States, by a contract in writing, agree to consolidate and amalgamate their capital stock, debts, property, assets and franchises, making a different capital, issuing new stock and creating a new and different corporation under the name and style of the Southern Pacific Railroad Company, which contract was signed, published and filed, as provided by the laws of California.

Your orator further alleges that, on the 12th day of August, 1873, under and by virtue solely of the law of the State of California of May 20, 1861, before referred

to, authorizing the amalgamation and consolidation of two or more railroad companies, the said Southern Pacific Railroad Company pretended to be organized in 1870, as aforesaid, and the Southern Pacific Branch Railroad Company, each organized and then existing railroad companies under and by virtue of the laws of California, did, by a contract in writing, without authority from the United States, agree to amalgamate and consolidate their capital stock, debts, property, assets and franchises, creating a new capital stock and issuing new certificates of stock and canceling the old ones, and creating a new and different corporation by the name and style of the Southern Pacific Railroad Company, a copy of which new articles of association and incorporation are hereto attached, marked Exhibit "A," and did duly publish and file such new articles as required by the laws of California.

And your orator alleges that the Southern Pacific Railroad Company, which was organized and created on August 12, 1873, by the said pretended articles of amalgamation and consolidation of said several railroad companies as heretofore set forth, did construct and complete a railroad from Tehachapi Pass by way of Los Angeles to the Colorado River in the manner and within the time prescribed in said act of Congress in which the Southern Pacific Railroad Company therein named was authorized and empowered to do, and there was not and is not now, any railroad or part thereof constructed or completed under said act or between said points otherwise than as aforesaid.

Your orator further shows that the general routes of said Atlantic and Pacific Railroad Company and of said Southern Pacific Railroad Company under said act of March 3, 1871, as said routes were located as aforesaid, cross each other in the State of California.

Your orator further alleges that said lands, in suit hereinbefore described, are situated on the general line of the said designated route of the Atlantic and Pacific Railroad Company, less than twenty miles therefrom and are less than twenty miles from said designated route of said Southern Pacific Railroad Company, and in such overlapping limits on the general route of each of said lines of road.

Your orator further shows that said lands have never been granted, sold, reserved, occupied by homestead settlers, pre-empted, or otherwise disposed of by the United States, or by the Mexican or Spanish Governments or any other government or authority, in whole or in part, or any estate or interest therein, otherwise than as set forth herein, and are not mineral lands.

Your orator further alleges that none of the lands in suit herein described as aforesaid, have ever been granted or conveyed to any or either of the defendants herein, or to said Southern Pacific Railroad Company organized by said articles of August 12, 1873, and that said last-named company has at all times failed and refused to pay into the treasury of the United States the cost of surveying, selecting and conveying said lands.

Your orator alleges that said Southern Pacific Railroad Company, to which corporation said grant was

made by said act of Congress of March 3, 1871, did not build or construct any portion of said railroad designated in said act to be constructed.

Your orator further alleges that defendants D. O. Mills and Garrit L. Lansing have a mortgage or deed of trust from defendant railroad company, for the above-described land, to secure the payment of certain indebtedness of said defendant company to them as trustees, which mortgage is dated April 1, 1875, and which is executed in due form of law and is recorded in Los Angeles and San Bernardino Counties, California, and constitutes a cloud upon the title of your orator.

Your orator further alleges that all of said lands were and are naturally timbered and wooded lands, and valuable chiefly for the timber and wood thereon.

Your orator further alleges that defendant Southern Pacific Railroad Company has, while claiming and pretending to own said lands, at various and divers times during the last ten years, by pretended conveyances, executed in due form of law, pretended to sell and convey large portions of said lands, and the wood and timber thereon, to various and divers persons to your orator unknown; and has thus realized from such wood and timber large sums of money which it has appropriated and converted to its own use.

That the names of such pretended purchasers, amounts and descriptions of land so pretended to be sold, and moneys realized therefrom by said defendant railroad company, are unknown to your orator; and as to all said matters the plaintiff asks that defendants

may answer fully as to the exact nature and extent thereof, giving the dates, amounts received, names of purchasers, and extent of adverse claims.

And your orator asks that, when such pretended purchasers and adverse claimants become known to the plaintiff, that they may be added as parties defendant herein.

Your orator alleges, upon information and belief, that defendant the City Brick Company makes some claim to all or a portion of said lands, the nature and extent of which claim is unknown to your orator, but which your orator prays may be fully disclosed by said defendant.

Your orator alleges that defendant railroad company now claims to own said lands and denies the plaintiff's right and title thereto; and said company, and said pretended purchasers from it, by its license and direction, have, during the past five years at many and divers times to your orator unknown, unlawfully entered upon said lands, chopped down the timber and trees thereon, then the property of your orator, carried away such timber and used and converted the same to their own use, the amount and value of which is unknown to your orator, but which is the greater part of the wood and timber naturally on said land; and are now removing from said lands wood cut thereon, and threatening to chop down other trees on said land and remove all said wood, and unless enjoined will do so, to the great and irreparable injury of the plaintiff.

Your orator further shows that the amount in con-

troversy herein exceeds the sum or value of $5,000, exclusive of interest and costs.

Your orator alleges that by reason of the premises the defendants herein have surrendered, forfeited and released to the United States all rights and franchises and lands, if they had any such, granted by said acts of Congress aforesaid, and which surrender, forfeiture and release the plaintiff prays may be enforced as to the land in suit herein, without prejudice to other rights of the United States.

In tender consideration whereof, and for as much as the plaintiff is remediless at and by strict rules of the common law, and can only be relieved in a court of equity, your orator prays that its title to said lands may be quieted, and that said mortgage to defendants Mills and Lansing may be decreed to be null and void and vacated, and that the defendants and each of them be forever enjoined from asserting or claiming any right or title thereto adverse to the plaintiff, and your orator prays that the defendants each and their agents be forever enjoined from cutting any tree or wood upon said land and from in any way injuring the trees growing thereon, and from removing or causing to be removed from said land any wood or timber now cut thereon or hereafter cut thereon.

Your orator further prays for an accounting from the defendant Southern Pacific Railroad Company for all wood and timber sold by it, and for all the moneys and profits realized from the sale or pretended sale of such lands containing wood and timber, and for such other

and further relief as the Court may deem equitable in the premises.

May it please your Honors to grant unto your orator a writ of injunction issuing out of and under the seal of this Honorable Court, directed to defendants, The Southern Pacific Railroad Company, and D. O. Mills and Garret L. Lansing, trustees, and the City Brick Company, enjoining them and each of them from asserting any right, claim or title to said lands, and from denying plaintiff's title thereto, and enjoining them each from cutting any tree or wood now on said land, and from removing any wood or timber now cut on said land.

May it please your Honors to grant unto your orator a writ of subpoena issuing out of and under the seal of this Honorable Court, to be directed to the Southern Pacific Railroad Company, D. O. Mills and Garrit L. Lansing, trustees, and the City Brick Company, commanding them each, on a certain day and under a certain penalty therein to be inserted, to be and appear before your Honors, and then and there answer the premises and further to stand to and abide such order and decree therein as shall be agreeable to equity and good conscience, and your orator will ever pray.

Your orator waives answer under oath.

JOSEPH H. CALL,

Special Asst. U. S. Attorney and of Counsel for Plaintiff.

WILLOUGHBY COLE,

United States Attorney, Southern District of California.

Exhibit "A."

Articles of association, amalgamation and consolidation, made and executed on this the twelfth day of August, A. D. 1873, by and between the Southern Pacific Railroad Company, of the first part, and the Southern Pacific Railroad Company of the second part:

Witnesseth: That whereas, the said party of the first part heretofore, to wit, on the eleventh day of October, A. D. 1870, was duly incorporated and organized under the laws of the State of California, by the amalgamation and consolidation of the following railroad corporations theretofore existing under the laws of said State, to wit: The San Farncisco and San Jose Railroad Company, The Santa Clara and Pajaro Valley Railroad Company, the Southern Pacific Railroad Company, and the California Southern Railroad Company, pursuant to Articles of Amalgamation and Consolidation of that date by them agreed upon, which articles were subsequently amended, to wit, on the eleventh day of April, A. D. 1871, by virtue of the laws of said State, whereby said corporation became duly incorporated and organized under the laws of said State for the purpose of purchasing, constructing, owning, maintaining and operating a continuous line of railroad from the city of San Francisco, in the State of California, through the city and county of San Francisco, the counties of San Mateo, Santa Clara, Monterey, Fresno, Tulare, Kern, San Bernardino and San Diego, to some point on the Colorado River, in the southwestern part of the State of California, a distance of seven hundred and twenty miles, as

near as may be, also a line of railroad from a point at or near Tehachapi Pass, by way of Los Angeles, to the Texas Pacific Railroad at or near the Colorado River, a distance of three hundred and twenty-four miles, as near as may be; also a line of railroad from the town of Gilroy, in the county of Santa Clara, in said State, passing through said county and the counties of Santa Cruz and Monterey, to a point at or near Salinas City in said last named county, a distance of forty-five miles, as near as may be, and also such branches to said lines as the board of directors of said corporation may consider advantageous to said corporation and direct to be established.

And whereas, the said party of the second part was, heretofore, to wit, on the twenty-third day of December, A. D. 1872, duly incorporated and organized under the laws of the State of California, for the purpose of purchasing, constructing, owning, maintaining and operating a railroad from a point on the Southern Pacific Railroad (the railroad of the party of the first part) at or near Salinas City in the county of Monterey, southeasterly to a point in Kern County, south of Tulare Lake, intersecting the San Joaquin Valley division of the said Southern Pacific Railroad; also from a point on the above-described line, at or near San Miguel in San Luis Obispo County; thence in a southerly direction to a point of intersection in Los Angeles County, with the line of the said Southern Pacific Pacific Railroad running from Tehachapi Pass by way of Los Angeles to Fort Yuma, said road passing into or through the counties

of Monterey, San Luis Obispo, Kern, Santa Barbara and Los Angeles and said roads, in the aggregate, being, as near as may be, four hundred and twenty-eight miles in length.

And whereas, said parties beleive a consolidation and amalgamation of their capital stocks, debts, properties, assets, roads, telegraphs, land and franchises, will be mutually advantageous;

And whereas, more than three-fourths in value of all the stockholders in interest of each of said parties, have consented in writing to such amalgamation and consolidation upon the terms and conditions hereinafter set forth;

Now, therefore, under and by virtue of the Statute of the State of California, in such case made and provided, the said parties mutually covenant and agree, each with the other, to the following articles, to wit:

Article First: Said parties do hereby amalgamate and consolidate themselves into a new corporation, under the name and style of the Southern Pacific Railroad Company, which new corporation shall continue in existence for the period of fifty years from the date of these articles;

And they do further consolidate and amalgamate their several capital stocks, debts, properties, assets, roads, telegraphs, lands, franchises, rights, titles, privileges, claims and demands of every kind whatsoever as well in possession as in expectancy, at law or in equity, and do grant, convey and vest the same in the said new corporation, as fully as the same are now severally held and enjoyed by them respectively, subject however to all condi-

tions, obligations, stipulations, contracts, agreements, liens, mortgages, encumbrances, judgments, claims and charges thereon or in anywise affecting the same or any part thereof.

Article Second: The object and purpose of said new corporation shall be to purchase, construct, own, maintain and operate the several lines of railroad hereinbefore described, to wit: a line of railroad from the city of San Francisco, in the State of California, through the city and county of SanFrancisco, the counties of San Mateo, Santa Clara, Monterey, Fresno, Tulare, Kern, San Bernardino and San Diego to some point on the Colorado River, in the southeastern part of the State of California, a distance of seven hundred and twenty miles, as near as may be, also a line of railroad from a point at or near Tehacapi Pass, by way of Los Angeles to the Texas Pacific Railroad at or near the Colorado River, passing through the counties of Los Angeles, San Bernardino, and San Diego, a distance of three hundred and twenty-four miles, as near as may be; also a line of railroad from the town of Gilroy in the county of Santa Clara in the same State, passing through said county and the counties of Santa Cruz and Monterey, to a point at or near Salinas City in said last-named county, a distance of forty-five miles, as near as may be; also a line or railroad from a point on the line thirdly above described at or near Salinas City, county of Monterey, southeasterly through said county and into Kern county, to a point south of Tulare Lake in said last-named county, intersecting at said point the line of railroad first above described, a distance of one

hundred and eighty miles as near as may be; also a line of railroad from a point on the last above-described line at or near San Miguel in the county of San Luis Obispo; thence in a southerly direction through said county, the county of Santa Barbara and into the county of Los Angeles to a point of intersection with the line of railroad secondly above described, to wit: the line from Tehachapi Pass by way of Los Angeles to the Texas Pacific Railroad at or near the Colorado River, a distance of two hundred and forty miles, as near as may be; making in all fifteen hundred and nine miles, as near as may be, and such branches to said lines as the board of directors of said new corporation may hereafter from time to time establish.

Article Third: The board of directors of said new corporation shall consist of seven persons and the following named persons shall act as such directors until their successors shall have been duly elected pursuant to the by-laws of said new corporation, hereafter to be adopted, viz: C. P. Huntington, D. D. Colton, Robert Robinson, Charles Mayne, S. T. Gage, E. N. Miller, Jr. and J. L. Willcutt.

Article Fourth: The capital stock of said new corporation shall be ninety million dollars divided into nine hundred thousand shares of one hundred dollars each, that sum being the contemplated actual cost of said railroads, including telegraph lines, rolling stock, motive power, shops, depots, &c.

Article Fifth: Each stockholder of each said parties shall have the same unmber of shares of the capital stock of the newcorporation which he now owns and holds of the capital stock of his repective company, upon the same

terms and conditions, and shall be entitled to receive from said new corporation certificates therefor, where the same has been fully paid up, upon the surrender of the certificates now held by him, and where the same has not been fully paid up, he shall receive such other evidence of his ownership as the board of directors of said new corporation shall direct upon the surrender of such evidence of his ownership of such unpaid stock as he may now hold.

Article Sixth: And the said several parties of the first and second parts, each for itself, hereby sell, assign, transfers, grants, bargains, releases and conveys to the said new and consolidated company and corporation, its successors and assigns forever all its property, real, personal and mixed of every kind and description; all its capital stock, all its interest in the shares of its capital stock subscribed but not fully paid for; all credits, effects, judgments, decrees, contracts, agreements, claims, dues and demands of every kind and description and all rights, privileges and franchises corporate and otherwise, held, owned or claimed by said parties of the first and second parts, or either of them in possession or expectancy, either at law or in equity, subject however to all conditions, obligation, stipulations, contracts, agreements, liens, mortgages, encumbrances, claims and charges thereon, or in anywise affecting the same.

Article Seventh: The said new consolidated company and corporation is to be liable or and shall fulfill, perform, do and pay all and each of the contracts and agreements, covenants, duties, obligations, liabilities, debts, dues and demands of the said several parties of the first

and second parts but this amalgamation and consolidation shall not in any way relieve the said parties of the first and second parts, or the stockholders thereof from any and all just liabilities.

In testimony whereof, the said party of the first part has caused this instrument to be signed by its vice-president (the president being absent) and its secretary, and its corporate seal to be thereunto affixed, and the said party of the second part has caused this instrument to be signed by its president and secretary and its corporate seal thereunto affixed, in pursuance of orders and resolutions of their several boards of directors, made on the twelfth day of August, 1873.

SOUTHERN PACIFIC RAILROAD COMPANY,

[Seal] By DAVID D. COLTON,
Vice-President.
J. L. WILLCUTT,
Secretary.

SOUTHERN PACIFIC BRANCH RAILROAD COMPANY

[Seal] By B. R. CROCKER,
President,
By E. H. MILLER, Jr.,
Secretary.

We, the undersigned, being the holders of stock to the extent of more than three-fourths of the value of all stockholders in interest of said Southern Pacific Railroad Company, party of the first part, to the foregoing new Articles of Association, Amalgamating and Consolidating, the said parties of the first and second parts here-

by consents to such amalgamation and consolidation and to the said new articles of association, this twelfth day of August, A. D. 1873.

LELAND STANDFORD,
CONTRACT & FINANCE CO.,
Pr. W. E. BROWN, Secy.

MARK HOPKINS.
ROBERT ROBINSON.
S. T. GAGE.
CHAS. MAYNE.
DAVID D. COLTON.
J. L. WILLCUTT.
E. H. MILLER, Jr.

We, the undersigned, being the holders of stock to the extent of more than three-fourths of the value of all stockholders in interest of the said Southern Pacific Branch Railroad Company, party of the second part to the foregoing new Articles of Association, Amalgamating and Consolidating the said parties of the first and second parts, hereby consents to such amalgamation and consolidation, and to the said new articles of association, this twelfth day of August, A. D. 1874.

LELAND STANFORD.
E. H. MILLER, Jr.
ALBERT GALLATIN.
MARK HOPKINS.
E. W. HOPKINS.
C. H. CUMMINGS.
B. R. CROCKER.

State of California,
Department of State. }

I, W. C. Hendricks, Secretary of the State of California, do hereby certify that I have carefully compared the annexed copy of Articles of Association, Amalgamation and Consolidation between the Southern Pacific Railroad Co., and the Southern Pacific Branch Railroad Co., with the original now on file in my office, and that the same is a correct transcript therefrom and of the whole thereof. Also, that this authentication is in due form and by the proper officer.

Witness my hand and the Great Seal of State, at office in Sacramento, California, the 5th day of September, A. D. 1889.

[Seal]

W. C. HENDRICKS,
Secretary of State,
By H. B. Davidson,
Deputy.

[Endorsed]: 184. In U. S. Circuit Court, Southern Dist. of Cal. United States vs. Southern Pacific Railroad Company et al. Bill of Complaint. Filed May 17th, 1890. Wm. M. Van Dyke, Clerk. J. H. Call, Spcl. Asst. U. S. Atty. Longley Bros., Reporters and Typewriters, Tel. 722, Los Angeles, Cal.

In the Circuit Court of the United States, Ninth Circuit, Southern District of California.

IN EQUITY.

THE UNITED STATES OF AMERICA, Complainant,

vs.

THE SOUTHERN PACIFIC RAILROAD COMPANY and D. O. MILLS, and GARRIT L. LANSING, Trustees, and THE CITY BRICK COMPANY, Respondents. } No. 184.

Answer.

And now come the repondents in the above-entitled cause, and for answer to the bill in equity, filed herein, on the 19th day of May, 1890, against them and the amendment to said bill, filed on the sixth day of March, 1891, against them, all purporting to be a bill brought by the United States, by the Attorney General thereof and signed by Joseph H. Call, as Special United States Attorney and Willoughby Cole, as United States Attorney, Southern District of California, and to so much and such parts of said bill as they are advised it is material for them to make answer unto, answering say:

I.

The respondents admit that the respondent, the Southern Pacific Railroad Company is a corporation, organized and existing under and by virtue of the laws of the State of California and a citizen of said last-mentioned State.

II.

The respondents admit that the land described in said bill was acquired by the United States of America from Mexico, in or about the year 1846 and confirmed by the Treaty of Guadalupe Hidalgo in the year 1848, and that such portions of said land then became public land of the United States as had not been heretofore granted to private individuals by Mexico.

The respondents deny that such lands ever since such acquisition and confirmation thereof has been or at the time of the filing of the bill of complaint in this suit was public land of the United States and deny that during all said times or at the time of filing its said bill herein the complainant was or that it is the owner of said land by title in fee simple, or the owner of any portion of said land and alleges on the contrary that the said land described in the bill had before the filing thereof been granted by the complainant to one of the respondents, namely, the Southern Pacific Railroad Company.

III.

The respondents deny that said land at the time of the filing of said bill of complaint in this cause on the 19th day of May, A. D. 1890, or for a long time prior thereto, was or had been public land of the United States.

IV.

The respondents admit that by an act of Congress, approved July 27, 1866, entitled, "An act granting lands to aid in the construction of a railroad and telegraph line from the States of Missouri and Arkansas to the Pacific Coast," Congress incorporated the Atlantic and Pacific

Railroad Company, and granted to aid Company to aid in the construction of the railroad and telegraph line, in said act described, a large quantity of public lands, but they aver that such grant was made on and subject to the conditions and with the limitations in said act mentioned, to which said act of Congres reference is here made—U. S. Statutes, Vol. XIV, p. 292. The respondents admit that sections 3 and 18 of said act of Congress are correctly set forth and recited in said bill; but by reason of the insufficiency of said recitals the respondents refer to the whole of said act of Congress.

V.

The respondents admit that the said Atlantic and Pacific Railroad Company duly accepted said grant, and began to construct said road in the State of Missouri, but they deny that it ever proceeded to or did construct any portions of said road in the State of California.

VI.

The respondents deny that said Atlantic and Pacific Railroad Company did locate on the ground or designate upon a plat or map the whole of said line of railroad under said act, from Springfield, Missouri, by way of the points and places named in said act in the time and manner provided in said act or otherwise to the Pacific Ocean and deny that it ever lawfully located or designated any part of said line in California; and deny that on or about ———, A. D. 1866, or at any other time, said Company did file any such plat in the office of the commissioner of the general land office, and deny that at that or any such time, any such designation or location of railroad was ap-

proved by the Secretary of the Interior and deny that all the odd sections of public lands for thirty miles on each side of said road (as the same was authorized to be constructed by said act) were withdrawn from market or reserved from sale.

VII.

The respondents deny that the said Atlantic and Pacific Railroad Company was authorized by said act or any other act of Congress to locate or construct a line of railroad from the crossing of the Colorado River to San Francisco.

They are advised and believe, and therefore aver, that under said act of Congress the respondent the Southern Pacific Railroad Company alone was authorized to construct a line of railroad from the crossing of the Colorado River to San Francisco and to acquire lands under said act of Congress along and opposite said line.

VIII.

The respondents admit that by section 23 of an act of Congress, approved March 3, 1871 (U. S. Stat. Vol. 16, P. 573), entitled, "An act to incorporate the Texas and Pacific Railroad Company and to aid in the construction of its road and for other purposes," it was provided as follows:

"Section 23. That, for the purpose of connecting the Texas-Pacific Railroad with the city of San Francisco, the Southern Pacific Railroad Company of California, is hereby authorized (subject to the laws of California) to construct a line of railroad from a point at or near Tehacapi Pass, by way of Los Angeles, to the Texas-Pacific Rail-

road, at or near the Colorado River, with the same rights, grants and privilieges and subject to the same limitations, restrictions and conditions as were granted to said Southern Pacific Railroad Company of California by the act of July 27, 1866; provided, however, that this section shall in no way affect or impair the rights, present or prospective, of the Atlantic and Pacific Railroad Company or any other railroad company."

IX.

The respondents admit that the Southern Pacific Railroad Company as it then existed duly accepted the said grant, and on the 3d April, A. D. 1871, did designate the line of its said road by a plat thereof which it on that day filed in the office of the commissioner of the general land office and they pray leave to refer to said map when the same shall be produced in this suit, and the respondents show that upon the filing of said map the Secretary of the Interior under date of April 3, 1871, directed the commissioner of the general land office to withdraw the granted lands along the route of said railroad as designated on said map from pre-emption, private entry and sale, and the commissioner of the general land office, under date of April 21, 1871, issued instructions to the register and receiver at Los Angeles, California, to withdraw from sale or location, pre-emption or homestead entry all the odd-numbered sections of public land within thirty miles of the said line of respondent's said railroad, and the respondents aver that all the lands mentioned in the bill of complaint in this suit which were public lands at the date of such orders for withdrawal

were thereupon withdrawn according to the said instructions. Certified copies of said orders of withdrawal are hereto annexed and made part of this answer, marked, Exhibit "A." A certified copy of the official diagram defining and marking the 20 and 30-mile limits opposite respondent's said railroad is herewith filed and made part of this answer, marked Exhibit No.——.

The respondents aver that the line of route of the Southern Pacific Railroad through said lands had been duly located, and the lands granted to it by said 23d section of the said act of March 3, 1871, had been duly withdrawn from market for the benefit of the respondents before the said Atlantic and Pacific Railroad Company attempted to locate any route for its road through or opposite to the said lands.

The respondent herein, the Southern Pacific Railroad Company, under and in fulfillment of the provisions of the said act of Congres hereinbefore cited, duly located, constructed and completed its said railroad from a point near Tehachapi Pass, by way of Los Angeles, to the Colorado River and commissioners appointed by the President of the United States duly reported the fact of such completion to the Department of the Interior, and said railroad was from time to time duly approved and accepted by the President of the United States.

The said Atlantic and Pacific Railroad Company never made any definite location of its railroad in California nor constructed any part of a railroad in said State under or according to the act of Congress ap-

proved July 27, 1866,)or any amendments, modifications or supplements thereto or otherwise howsoever.

The pretended location of a route by said Atlantic and Pacific Railroad Company in California never was or became a definite location or anything else than what is known as a designation of a general route for a railroad, nor did the Secretary of the Interior ever undertake to accept such pretended location as anything else than a designation of a general route, and no right to or interest in any public lands was acquired by said railroad company by reason of any such designation or any acts of acceptance thereof; and the decision of the Secretary of the Interior holding that such general route was authorized by the act of Congress approved July 27, 1866, above referred to was in contravention of a previous decision of the Secretary of the Interior to the contrary effect, and subsequently thereto and prior to the institution of this suit was reversed by the decision of a subsequent Secretary of the Interior, holding that the said Atlantic and Pacific Railroad Company was not entitled to construct a line to San Francisco which last-mentioned decision still remains in full force and effect so far as the Interior Department is concerned and as this defendant is advised and believes and therefore avers, the decision of the Secretary of the Interior undertaking to accept from the Atlantic Railroad Company a designation of a route for a railroad upon the route referred to was unauthorized and void.

X.

The respondents admit that by the act of Congress, approved July 6, 1886, entitled "An act to forfeit the lands granted to the Atlantic and Pacific Railroad Company to aid in the construction of a railroad and telegraph line from the States of Missouri and Arkansas to the Pacific Coast, and to restore the same to settlement and for other purposes," all the lands and rights to lands in California theretofore granted or conferred upon said Atlantic and Pacific Railroad Company were declared forfeited and restored to the public domain. They pray leave to refer to said act, but they deny that the same in anywise operated to resume or restore to the public domain as against the respondents any lands which it had theretofore acquired or become entitled to under any acts of Congress of the United States. They admit and aver that no part of said Atlantic and Pacific Railroad had at the time of the passage of said act of 1886 or has at any time since been constructed in the State of California.

XI.

The respondents admit that on or about the 2d day of December, 1865, a corporation was organized under the laws of the State of California under the corporate name and style of the Southern Pacific Railroad Company, and under a general law of said State, approved May 20, 1861, entitled "An act to provide for the incorporation of railroad companies and the management of the affairs thereof, and other matters relating thereto."

They admit that said act is printed in the Statutes of California, 1861, at page 607.

And the respondents admit that the said corporation, "The Southern Pacific Railroad Company," was formed for the purpose and with the corporate powers, as stated in its articles of incorporation, of constructing, owning and maintaining a railroad from some point on the Bay of San Francisco, in the State of California, to the eastern line of the State of California, there to connect with a contemplated railroad to the Mississippi River.

They refer to said Articles of Incorporation for the precise contents, purport and effect thereof.

XII.

The respondents admit that on or about the 11th day of October, A. D. 1870, under and by virtue of the general laws of the State of California, on that behalf, the Southern Pacific Railroad Company, San Francisco and San Jose Railroad Company, the Santa Clara and Pajaro Valley Railroad Company, corporations organized and existing under the laws of California, did by contract in writing agree to consolidate and amalgamate their capital stock, debts, property, assets and franchises under the name of the Southern Pacific Railroad Company, in the manner provided by the laws of California. They admit that such contract was signed, published and filed as provided by the laws of California.

They pray leave to refer to such articles of consoli-

dation and amalgamation if material, to any purposes of this suit and to the laws of California authorizing the same.

They deny that by any such agreement of consolidation and amalgamation or by any consolidation or amalgamation, a different capital was made or a new or different corporation was formed, but they aver that the corporation thereafter existing was a consolidation and amalgamation of the theretofore existing corporation and not a newly created corporation.

XIII.

The respondents admit that on or about the 12th day of August, A. D. 1873, under and by virtue of the laws of the State of California, on that behalf the Southern Pacific Railroad Company as it existed upon the said consolidation and amalgamation of 1870, and the Southern Pacific Branch Railroad Company, each organized and then existing as railroad companies under the laws of California, did by a contract in writing, agree to amalgamate and consolidate their capital stock, debts, property, assets and franchises under the name and style of the Southern Pacific Railroad Company. They admit that a true copy of the said articles of association, amalgamation and consolidation are found in Exhibit "A" attached to the complainant's bill, and that said articles were duly published and filed as required by the laws of California. They pray leave to refer to such articles so far as material to this suit and to the laws of California authorizing the same. They deny that by any such agreement of consolidation and amal-

gamation or by any consolidation and amalgamation a new capital stock or a new or different corporation was created, but they aver that the corporation thereafter existing was a consolidation and amalgamation of the theretofore existing corporations and not a newly created corporation.

XIV.

The respondents admit and aver that the Southern Pacific Railroad Company as it existed under said last mentioned articles of association, amalgamation and consolidation, but they deny that any Southern Pacific Railroad Company organized or created on August 12, 1873, or on any such date constructed and completed a railroad from Tehachapi Pass, by way of Los Angeles, to the Colorado River, in the manner and within the time prescribed in the said 23d section of the act of Congress of March 3, 1871, set forth in the complainant's bill, and that such railroad so constructed as aforesaid is the only railroad constructed or completed under said act or between the said points.

The respondents admit that the route of the Southern Pacific Railroad Company under said act of March 3, 1871, as said route was located as aforesaid crossed the line of a pretended but wholly unauthorized location sought or attempted to be adopted by the Atlantic and Pacific Railroad Company after the location of the route of said Southern Pacific Railroad under and according to said 23d section of the said act of Congress of March 3, 1871, but they deny the allegation of the

bill that the general routes of said Atlantic & Pacific Railroad Company and of the Southern Pacific Railroad Company under said act of March 3, 1871, as said routes were located as in said bill alleged or otherwise, cross each other in the State of California.

The respondents admit and aver that the lands in suit as described in the complainant's bill are for the most part less than twenty miles and are all less than thirty miles from the located route of the Southern Pacific Railroad Company, and less than twenty miles from the pretended but unauthorized location of the Atlantic and Pacific Railroad above referred to, but they deny that the same are situated on any general line of any lawfully or properly designated route of the Atlantic & Pacific Railroad Company or are in overlapping limits on the general route of each of the lines of road referrd to, and they deny that said lands are on the same general route of the said two railroads as defined in the said act of Congress granting lands to aid in their construction.

XV.

The respondents admit that the lands described in the complainant's bill are not mineral lands, and that they have never been granted, sold, reserved, occupied by homestead settlers, pre-empted or otherwise disposed of by the United States except as they have been granted to the Southern Pacific Railroad Company under said Congressional grants made July 27, 1866, and March 3, 1871.

The respondents deny that none of the lands in suit

have ever been granted or conveyed to any or either of the respondents herein or to the Southern Pacific Railroad Company as existing under the agreement of consolidation and amalgamation of August 12, 1873, and deny that said last-named company has failed or refused to pay into the Treasury of the United States the cost of surveying, selecting and conveying said lands.

The respondents deny that the Southern Pacific Railroad Company, to which corporation said grant was made by said act of Congress of March 3, 1871, did not build or construct any portion of said railroad designated in said act to be constructed and aver the contrary thereof, and that the said Southern Pacific Railroad Company did construct its road in conformity with law and in the time and manner prescribed by law from Tehachapi Pass by the way of Los Angeles to Fort Yuma.

XVI.

They aver that a large quantity of the lands sued for in the complainant's bill has been conveyed to these respondents by patents of the United States of America duly issued and delivered to them before the institution of this suit.

A schedule of the lands so patented, with the number and date of the patent, is hereto annexed and made part of this answer, marked Exhibit "B," amounting to ——— acres. The patents or certified copies thereof will be produced in evidence upon the hearing of this cause.

XVII.

The respondents aver that they had, before the institution of this suit, duly located and selected at the proper district land office, in accordance with the laws of the United States and the regulations of the Department of the Interior, and had paid into the Treasury of the United States the costs of surveying and conveying —— acres of the said lands as particularly described in the schedule thereof, hereto annexed and made part of this answer, marked "B." The respondents here refer to and make part of this answer, certified copies herewith filed as Exhibits Nos. — of Los Angeles location list No. 21 of granted limits and selection list No. 25 of indemnity lands selected at the Los Angeles land office, said list showing also the payment of the officers' fees and the costs of surveying and patenting said lands.

The respondents aver that they are fully entitled under the laws of the United States to receive patents for the said lands scheduled upon said Exhibit No. ——

As to the other lands described in said bill of complaint, and not included in the said schedules Exhibits "A," "B," and "C" and "D" above mentioned, the respondents claim the right to locate and select under said acts of Congress of July 27th, 1866, and March 3, 1871, all such as are or at the time of the accrual of their rights under said acts were public lands not excepted from said grants.

XVIII.

These respondents admit and particularly the South-

ern Pacific Railroad Company admits that the respondents D. O. Mills and Gerrit L. Lansing, have a mortgage or deed of trust from it for the above described land to secure the payment of certain indebtedness of this respondent; and that said mortgage is dated April 1, 1875, and is executed in due form of law and is recorded in Los Angeles and San Bernardino Counties, California, but they deny that complainant has any title to the said land which can be injuriously or otherwise affected thereby.

XIX.

The respondents admit and aver that they have sold, and conveyed their title to many of the lands described in the bill during the last ten years. A list of the tracts sold, with dates of sales and names of purchasers, is hereto annexed, marked Exhibit "B" and is made part of this answer.

XX.

The respondents admit that they claim and have claimed to own said lands, except such as they have sold and conveyed, as aforesaid, and such as are included in private paramount grants heretofore duly confirmed, and that they deny right or title in the complainant thereto, or to any of the timber growing thereon, or to the timber, if any, that may have been cut and removed therefrom. They deny that they or any person or persons by their license or direction have made any unlawful entry upon said lands or chopped down any timber or trees thereon which were the property of the complainant or carried away, used or converted to their

own use any such timber or trees which were the property of the complainant or that any acts of the respondents in respect to such lands or the timber or trees thereon have injuriously affected or can or could injuriously affect the complainant or any of its rights. They admit that the value of said lands in controversy herein far exceeds the sum or value of $5,000, exclusive of interest and costs and allege that the subject matter in controversy in this cause exceeds the sum of $5,001, exclusive of interest and costs of suit.

XXI.

The respondents deny any and all liability to the complainant in the premises, and deny their liability to account for the purchase money of lands sold, or for timber or trees cut from said lands, and they deny that by reason of any of the matters or things mentioned or referred to in the bill, the respondents have surrendered, forfeited or released to the United States any rights or franchises or lands granted by any of the acts of Congress in said bill mentioned or referred to.

XXII.

The respondents deny that the City Brick Company has any interest whatever in the lands and premises in controversy and the respondent, the City Brick Company asks that the bill against it may be dismissed.

XXIII.

The respondents admit that some of the lands in suit herein were situated at or near the crossing of the line of route adopted by the Southern Pacific Railroad Com-

pany and upon which its railroad was built, under act of Congress of March 3, 1871, and the attempted, though unauthorized location of general route of the Atlantic and Pacific Railroad from Springfield, Missouri, to the Pacific hereinbefore referred to. Except as aforesaid, they deny the allegations incorporated into the bill of complaint by amendment filed March 6th, 1891, and each and every such allegations.

They deny that when said grant to the Southern Pacific Railroad Company was made by the said act of Congress of March 3, 1871, it was found that the line of route which said Company was required to adopt or which it did adopt was upon the same general line as the route of the Atlantic and Pacific Railroad Company from Springfield, Missouri, to the Pacific, and deny that the route of the said Atlantic and Pacific Railroad Company from Springfield, Missouri, to the Pacific as said grant was made to said Company by said act, of Congress of July 27, 1866; or as said route was located or adopted or pretended to be located or adopted was or is upon the same general line as the route of said Southern Pacific Railroad Company from Tehachapi Pass by way of Los Angeles to the Colorado River at Fort Yuma, according to the terms of said grant to said Southern Pacific Railroad Company of March 3, 1871, or as said route was in fact adopted or located.

The respondents admit that the pretended location of route of said Atlantic and Pacific Railroad Company crosses the railroad of this defendant as located and constructed between Tehachapi Pass and Los Angeles

and that some of the lands in suit were at or near such point of crossing but except as above admitted they deny that the lands in suit were or are at the intersection of said two lines of route and they deny that such lands or any of them were or are at any place where said two routes were or are upon the same general lines or were excluded or deducted from any later grant to the Southern Pacific Railroad Company.

XXIV.

The respondents deny all and all manner of unlawful combination and confederacy wherewith they are by the said bill charged, without this, that any other matter, cause or thing in the complainant's bill of complaint contained, material or necessary for these respondents to make answer unto and not herein and hereby well and sufficiently answered, confessed, traversed, avoided or denied, is true to the knowledge or belief of these respondents; all of which matters and things these respondents are ready and willing to aver, maintain and prove as this Honorable Court shall direct, and pray to be hence dismissed with their reasonable costs and charges in this behalf most wrongfully sustained.

JOSEPH D. REDDING,
Solicitor and of Counsel for Respondents.

CREED HAYMOND, R.,
Of Counsel for Respondents.

[Endorsed]: No. 184. Circuit Court of the United States, Ninth Circuit, Southern District of California. United States of America vs. S. P. R. R. Co., et al. An-

swer. Filed May 1st, 1891. Wm. M. Van Dyke, Clerk. Joseph D. Redding, Solicitor for Respondents, 33-37 Chronicle Building, San Francisco, Cal.

In the Circuit Court of the United States, Ninth Circuit, Southern District of California.

THE UNITED STATES OF AMERICA,

Plaintiff,

vs.

THE SOUTHERN PACIFIC RAILROAD COMPANY, and D. O. MILLS and GARRIT L. LANSING, Trustees, THE CITY BRICK COMPANY, ATLANTIC AND PACIFIC FIBRE IMPORTING AND MANUFACTURING COMPANY, LIMITED, JULIUS ABRAHAMSON, HUGO ABRAHAMSON, Mrs. JESUS ORD de ANDRADE, Mrs. THOMAS ALLISON, Mrs. MARY BACKMAN, Mrs. MATILDA L. BARBER, HENRY A. BARCLAY, E. T. BARBER, THOMAS N. BECK, A. M. BENHAM, JESSE MARTIN BLANCHARD, E. H. BLOOD, IRA H. BRADSHAW, B. B. BRIGGS, PHILOMELA T. BUNELL, FREDERICK H. BUSBY, A. W. BUTLER, H. A. BOND, WILLIAM H. CARLSON, V. E. CARSON, B. F. CARTER, BENJAMIN F. CARTER, HARRY CHANDLER, FRED. CHANDLER, WALTER S, CHAFFEE, J. N. CHAPMAN, F. O. CHRISTENSEN, Mrs. L. C. CHORMICLE, BYRON O. CLARK, GEORGE CLAUSSEN, CLARENCE T. CLEVE, NICHOLAS COCHEMS, NATHAN

COLE, Jr., PETER COOK, I. D. CORY, SEATON T. CULL, STEFANO CUNEO, J. A. DAHL, ANDREW J. DARLING, THOMAS A. DELANO, RICHARD DILLON, JOHN DITTER, DAVID DOLBEEN, JOHN F. DUEHREN, JAMES F. DUNSMOOR, EDWARD G. DURRANT, ROBERT DUNN, HENRY ELMS, FAIRMOUNT LAND AND WATER COMPANY, FARMING AND FRUIT LAND COMPANY, GEORGE W. FENTREES, S. W. FERGUSON, WILLIAM FERGUSON, WILLIAM FREEMAN, JOSEPH W. FURNIVAL, J. GARBER, F. C. GARBUTT, J. DREW GAY, F. A. GEIER, AMBROSE E. GEORGE, WILL D. GOULD, Mrs. MARY L. GOULD, THOMAS E. GOULD, JAMES GRETON, W. F. GROSSER, D. J. HAINES, HERMAN HAINES, JAMES M. HAIT, SIMEON HAMBERG, JACOB HARPE, ALICE A. HALL, CALVIN HARTWELL, WILLIAM T. HAMILTON, JAMES HAMILTON, PETER HAMILTON, JOHN C. HASKELL, JOHN C. HAY, MARY JACKSON HALL, JULIUS HEYMAN, J. M. HILL, JOHN D. HOFFMAN, AUGUST HOELLING, J. F. HOLBROOK, W. R. HUGHES, GEORGE A. HUNTER, J. F. HOUGHTON, E. J. ISMERT, W. W. JENKINS, THOMAS J. JOHANNSEN, M. D. JOHNSON, JOHN J. JONES, A. S. JOSEPH, JOHN KENEALEY, FREDERICK KENWORTHY, RICHARD KICHLINE, JOSEPH KURTZ, CHARLES KUTSCHMAR, Mrs. AM-

MORETTA J. LANTERMAN, T. B. LAWHEAD, L. B. LAWSON, LAWSON M. LA FETRA, STEPHEN L. LEIGHTON, MIGUEL LEONIS, GEORGE LOOMIS, MARION C. LOOP, PABLO LOPEZ, DANIEL LUCE, G. W. MACK, JOHN B. MARTIN, CORA L. MATHIASON, EZRA MAY, ANGUS S. McDONALD, A. M. MELROSE, Mrs. FLOSSY MELROSE, W. E. McVAY, THOMAS MENZIES, J. G. MILLER, JOHN MILLION, Mrs. MAMIE O. MILLION, H. H. MIZE, THOMAS F. MITCHELL, W. H. MOSELEY, L. E. MOSHER, JOSEPH MULLALY, ANDREW MYERS, D. C. NEWCOMB, ALBERT E. NETTLETON, NORTH PASADENA LAND AND WATER COMPANY, JAMES O'REILLY. GEORGE L. OTT, PACIFIC COAST OIL COMPANY, J. H. PAINTER, M. D. PAINTER, Mrs. ANNIE PALEN, J. R. PALLETT, W. A. PALLETT, T. A. PALLETT, C. O. PARSONS, F. W. PATTEE, JAMES PEIRANO, JOHN J. PECKHAM, RAMON PEREA, DANIEL PHELAN, EDWARD E. PERLEY, McH. PIERCE, WILLIAM PISCH, R. M. POGSON, A. W. POTTS, LAFAYETTE S. PORTER, A. J. PRASTER, F. H. PRESCOTT, LEWIS H. PRICE, CHARLES RAGGIS, W. B. RALPHS, JAMES B. RANDOL, C. P. RANDOLPH, V. M. RANDOLPH, FRANCISCO REAL, GEORGE H. REED, JOHN REA, OTTO RINDERKNECHT, FELIPE RIVERA, JAMES ROBERTSON, GEORGE D. ROWAN, S.

D. SAVAGE, JACOB SCHERER, GEORGE W. SEIFERT, LUCIANO SEQUOIS, HENRY C. SHEARMAN, HENRIETTA SHIRPSER, REBECCA JETTA SHIRPSER, DAVID SHIRPSER, MAX SHIRPSER, GIANBATISTA SINACO, J. S. SLAUSON, J. WALLEN SMITH, Mrs. MAGGIE SMITH, E. SOMMER, W. A. SPENCER, H. G. STEVENSON, H. J. STEVENSON, M. W. STIMSON, ROBERT STRATHEARN, R. P. STRATHERN, ELEANOR SUSSMAN, D. M. SUTHERLAND, JOHN SWEENY, W. H. TAGGART, JAMES P. TAYLOR, MARY G. TONGIER, JAMES R. TOWNSEND, Mrs. C. L. TRUE, L. TUNISON, J. S. TURNER, GEORGE S. UMPLEBY, F. VEYSSET, GEORGE VILAS, ALDEN R. VINING, DANIEL A. WAGNER, S. A. WALDRON, W. W. WALLACE, C. H. WATTS, Mrs. JULIA J. WHEELER, A. C. WHITACRE, M. L. WICKS, MOYE WICKS, Mrs. JENNIE L. WICKS, MARY C. WILLIAMS, C. N. WILSON, ROBERT N. C. WILSON, J. YOUNGBLOOD,

Defendants

Amended Bill of Complaint.

To the Judges of the Circuit Court of the United States for the Southern District of California:

I.

The United States of America, by the Attorney General thereof, by an order of court first had and obtained, brings this its amended bill of complaint against; The Southern Pacific Railroad Company, acting as a cor-

poration under and by virtue of the authority hereinafter set forth; D. O. Mills and Garrit L. Lansing, trustees; the City Brick Company, a corporation organized and existing under and by virtue of the general laws of the State of California; the Atlantic and Pacific Fibre Importing and Manufacturing Company, Limited, a corporation organized and existing under and by virtue of the laws of Great Britian; the Fairmont Land and Water Company, the Farming and Fruit Land Company, the North Pasadena Land and Water Company, and the Pacific Coast Oil Company, each a corporation organized and existing under and by virtue of the laws of California; and Julius Abrahamson, Hugo Abrahamson, Mrs. Jesus Ord de Andrade, Mrs. Thomas Allison, Mrs. Mary Backman, Mrs. Matilda L. Barber, Henry A. Barclay, E. T. Barber, Thomas N. Beck, A. M. Benham, Jesse Martin Blanchard, E. H. Blood, Ira H. Bradshaw, B. B. Briggs, Philomela T. Bunell, Frederick H. Busby, A. W. Butler, H. A. Bond, William H. Carlson, V. E. Carson, B. F. Carter, Benjamin F. Carter, Harry Chandler, Fred. Chandler, Walter S. Chaffee, J. N. Chapman, F. O. Christensen, Mrs. L. C. Chormicle, Byron O. Clark, George Claussen, Clarence T. Cleve, Nicholas Cochems, Nathan Cole, Jr., Peter Cook, I. D. Cory, Seaton T. Cull, Stefano Cuneo, J. A. Dahl, Andrew J. Darling, Thomas A. Delano, Richard Dillon, John Ditter, David Dolbeen, John F. Duehren, James F. Dunsmoor, Edward G. Durant, Robert Dunn, Henry Elms, George W. Fentress, S. W. Ferguson, William Ferguson, Wiliam Freeman, Joseph W. Furnival, J. Garber, F. C. Garbutt, J. Drew

Gay, F. A. Geier, Ambrose F. George, Will D. Gould, Mrs. Mary L. Gould, Thomas E. Gould, James Greton, W. F. Grosser, D. J. Haines, Herman Haines, James M. Hait, Simeon Hamberg, Jacob Harpe, Alice A. Hall, Calvin Hartwell, William T. Hamilton, James Hamilton, Peter Hamilton, John C. Haskell, John C. Hay, Mary Jackson Hall, Julius Heyman, J. M. Hill, John D. Hoffman, August Hoelling, J. F. Holbrook, W. R. Hughes, George A. Hunter, J. F. Houghton, E. J. Ismert, W. W. Jenkins, Thomas J. Johannsen, M. D. Johnson, John J. Jones, A. S. Joseph, John Kenealey, Frederick Kenworthy, Richard Kichline, Joseph Kurtz, Charles Kutschmar, Mrs. Ammoretta J. Lanterman, T. B. Lawhead, L. B. Lawson, Lawson M. La Fetra, Stephen L. Leighton, Miguel Leonis, George Loomis, Marion C. Loop, Pablo Lopez, Daniel Luce, G. W. Mack, John B. Martin, Cora L. Mathiason, Ezra May, Angus S. McDonald, A. M. Melrose, Mrs. Flossy Melrose, W. E. McVay, Thomas Menzies, J. G. Miller, John Million, Mrs. Mamie O. Million, H. H. Mize, Thomas F. Mitchell, W. H. Moseley, L. E. Mosher, Joseph Mullally, Andrew Myers, D. C. Newcomb, Albert E. Nettleton, James O'Reilly, George L. Ott, J. H. Painter, M. D. Painter, Mrs. Annie Palen, J. R. Pallett, W. A. Pallett, T. A. Pallett, C. O. Parsons, F. W. Pattee, James Peirano, John J. Peckham, Ramon Perea, Daniel Phelan, Edward E. Perley, McH. Pierce, William Pisch, R. M. Pogson, A. W. Potts, Lafayette S. Porter, A. J. Praster, F. H. Prescott, Lewis H. Price, Charles Raggis, W. B. Ralphs, James B. Randol, C. P. Randolph, F. M. Randolph,

Francisco Real, George H. Reed, John Rea, Otto Rinderknecht, Felipe Rivera, James Robertson, George D. Rowan, S. D. Savage, Jacob Sherer, George W. Seifert, Luciano Sequois, Henry C. Shearman, Henrietta Shirpser, Rebecca Jetta Shirpser, David Shirpser, Max Shirpser, Gianbatista Sinaco, J. S. Slauson, J. Wallen Smith, Mrs. Maggie Smith, E. Sommer, W. A. Spencer, H. G. Stevenson, H. J. Stevenson, M. W. Stimson, Robert Strathearn, R. P. Strathearn, Eleanor Sussman, D. M. Sutherland, John Sweeny, W. H. Taggart, James P. Taylor, Mary G. Tongier, James R. Townsend, Mrs. C. L. True, L. Tunison, J. S. Turner, George S. Umpleby, F. Veysset, George Vilas, Alden R. Vining, Daniel A. Wagner, S. A. Waldron, W. W. Wallace, C. H. Watts, Mrs. Julia J. Wheeler, A. C. Whitacre, M. L. Wicks, Moye Wicks, Mrs. Jennie L. Wicks, Mary C. Williams, C. N. Wilson, Robert N. C. Wilson, and J. Youngblood; and each of said defendants being a citizen of the State of California, and residing therein, except said Atlantic and Pacific Fibre Importing and Manufacturing Company, Limited, which,. as your orator alleges upon its information and belief, is a citizen of Great Britain and a British subject;

And thereupon your orator alleges and shows unto the Court that the lands hereinafter described were acquired by the United States of America from Mexico in the year 1846, and the title to said lands were confirmed to your orator by treaty of Guadalupe Hidalgo in the year 1848; and all of said lands were then, ever since have been and now are owned by the United

States, by title in fee simple, and your orator during all of said times has been, and now is, in possession thereof; said lands being described as follows, to wit:

All of the sections of land designated by odd numbers in townships three (3) and four (4) north, ranges five (5), six (6) and seven (7) west; township one (1) north, ranges sixteen (16), seventeen (17) and eighteen (18) west; townships six (6) and south three-fourths of township seven (7) north, ranges eleven (11), twelve (12), thirteen (13), fourteen (14), fifteen (15), sixteen (16), seventeen (17), eighteen (18) and nineteen (19) west; also all the sections of land designated by odd numbers as shown by the public surveys, embraced within the townships from number two (2) north to number five (5) north, both numbers included, and ranges from eight (8) west to number eighteen (18) west, both numbers included, except sections twenty-three (23) and thirty-five (35) in township four (4) north, range fifteen (15) west, and except sections one (1), eleven (11) and thirteen (13), in township three (3) north, range fifteen (15) west; also the unsurveyed lands within said area which will be designated as odd-numbered sections when the public surveys according to the laws of the United States shall have been extended over such townships; all the aforesaid lands being surveyed by San Bernardino base and meridian, and situated within the State of California.

II.

Your orator further shows that, by the act of Congress approved July 27, 1866, entitled "An act grant-

ing lands to aid in the Construction of a Railroad and Telegraph Line from the States of Missouri and Arkansas to the Pacific Coast," Congress incorporated the Atlantic and Pacific Railroad Company, and granted to said company, in aid of the construction of such railroad, a large amount of lands in the State of California and other states and territories, and to the whole of which said act your orator refers (See U. S. Statutes, Volume 14, page 292.)

Section 3 of said act provides as follows:

"That there be and hereby is granted to the Atlantic and Pacific Railroad Company, its successors and assigns, for the purpose of aiding in the construction of said railroad and telegraph line to the Pacific Coast, and to secure the safe and speedy transportation of mails, troops, munitions of war and public stores, over the route of said line of railway and its branches, every alternate section of public land not mineral designated by odd numbers, to the amount of twenty alternate sections per mile on each side of said railroad line, as said company may adopt, through the territories of the United States, and ten alternate sections of land per mile on each side of said railroad whenever it passes through any State and whenever on the line thereof the United States have full title, not reserved, sold, granted or otherwise appropriated, and free from pre-emption or other claims, or rights, at the time the line of said road is designated, by a plat thereof filed in the office of the commissioner of the general land office, and whenever prior to said time any of said sections or

parts of sections shall have been granted, sold, reserved, occupied by homestead settlers, or pre-empted, or otherwise disposed of, other lands shall be selected by said company in lieu thereof, under the direction of the Secretary of the Interior, in alternate sections, and designated by odd numbers, not more than ten miles beyond the limits of said alternate sections, and not including the reserved numbers; provided, that if said route shall be found upon the line of any other railroad route, to aid in the construction of which lands have been heretofore granted by the United States, as far as the routes are upon the same general line, the amount of land heretofore granted shall be deducted from the amount granted by this act."

And section 18 of said act provides as follows:

"Sec. 18. That the Southern Pacific Railroad, a company incorporated under the laws of the State of California, is hereby authorized to connect with the said Atlantic and Pacific Railroad, formed under this act, at such point near the boundary line of the State of California as they shall deem most suitable for a railroad line to San Francisco, and shall have a uniform gauge and rate of freight or fare with said road, and in consideration thereof, to aid in its construction, shall have similar grants of land subject to all the conditions and limitations herein provided, and shall be required to construct its road on the like regulations as to time and manner with the Atlantic and Pacific Railroad herein provided for."

Your orator further shows that said Atlantic and Pacific Railroad Company duly accepted said grant and pro-

ceeded to construct said road, and did locate on the ground and designate upon a plat or map the whole of said line of railroad under said act, from Springfield, Missouri, by way of the points and places named in said act, and in the time and manner provided in said act, to the Pacific Ocean; and on or about ————, 1866, did file such plat in the office of the commissioner of the general land office, and which designation and location was approved by the Secretary of the Interior at that time, and all the odd sections of public lands on each side of said road, for thirty miles, were thereupon withdrawn from market and reserved; including said lands in suit herein which fell within the twenty-mile limits of said line.

III.

Your orator further shows the Court that, by section 23 of an act of Congress aproved March 3, 1871 (See U. S. Stats. Vol. 16, p. 573), entitled "An act to Incorporate the Texas and Pacific Railroad Company, and to aid in the construction of its road and for other purposes," it was provided as follows:

"That for the purpose of connecting the Texas and Pacific Railroad with the city of San Francisco, the Southern Pacific Railroad Company of California is hereby authorized (subject to the laws of California) to construct a line of railroad from a point at or near Tehachapi Pass, by way of Los Angeles, to the Texas Pacific Railroad at or near the Colorado River, with the same rights, grants and privileges and subject to the same limitations, restrictions and conditions as were granted to said Southern Pa-

cific Railroad Company of California, by the act of July 27, 1866.

"Provided, however, that this section shall in no way affect or impair the rights, present or prospective, of the Atlantic and Pacific Railroad Company or any other railroad company."

IV.

Your orator further shows that, by the act of Congress approved July 6, 1886, entitled "An act to forfeit the lands granted to the Atlantic and Pacific Railroad Company to aid in the construction of a railroad and telegraph line from the States of Missouri and Arkansas to the Pacific Coast and to restore the same to settlement, and for other purposes," all the lands and rights to lands in California theretofore granted and conferred upon the said Atlantic and Pacific Railroad Company were forfeited and resumed to the United States, and restored to the public domain, for noncompletion of that portion of said railroad to have been completed in California, no part of said road having been constructed in California.

V.

Your orator is informed and believes, and so alleges the fact to be, that the defendants herein make some claim of ownership to the lands above described, the exact nature and extent of such claims being unknown to your orator; but your orator is informed and believes, and so alleges the fact, that said defendants claim said lands under and by virtue of said act of Congress of March 3d, 1871, above set forth, granting lands to the Southern Pacific Railroad Company, to aid in the construction of

a railroad and telegraph line from Tehachapi Pass, via Los Angeles, to a point at or near the Colorado River, and to there connect with said Texas and Pacific Railroad company; and said defendants claim that said Southern Pacific Railroad Company did accept the terms and conditions of said grant, and did designate the route of its road between said points within the time and manner provided in said act of Congress, but your orator alleges that the designated line of route of said Southern Pacific Railroad Company so claimed and pretended to be located as aforesaid lies upon the same line as that of the Atlantic and Pacific Railroad Company, and the lands in suit herein, if said Southern Pacific Railroad Company had designated its said line of route as claimed by said defendants, would be at the place where the said routes would be upon the same general line, and such routes would have intersected each other.

VI

Your orator further alleges that, if said Southern Pacific Railroad Company had designated its line of routt from Tehachapi Pass by way of Los Angeles to a point at or near the Colorado River as claimed by defendants herein, or between such terminal points at all, that such route would have been upon the same general line as the route of said Atlantic and Pacific Railroad Company, located as aforesaid, and all the lands in suit herein would have fallen within the limits of the grant to each of said companies and in such overlapping limits within the twenty-mile and primary limits of said Atlantic and Pacific Railroad; but your orator alleges that none of said

lands were covered by said grant to said Southern Pacific Railroad Company, and none of said lands were of the category of lands which were to be granted to said company.

VII.

Your orator further alleges and shows unto the Court that all of the lands in suit herein are situated within twenty miles of the designated line of route of said Atlantic and Pacific Railroad Company and within the primary and twenty-mile limits of said grant; and as respects the mineral character of said lands, and of every tract thereof, they were in the same condition in that respect during the whole of the year 1866 that they have been at all times from that year down to and including the 3d day of April, 1871.

VIII.

Your orator is informed and believes, and so alleges the fact to be, that the claim of defendants to said lands is invalid, and not founded upon any legal or equitable right, but is a mere pretence and excuse for the defendants to trespass upon said lands.

IX.

Your orator is informed and believes, and so alleges the fact to be, that the defendants herein claim that a line of railroad and telegraph line, from Tehachapi Pass, by way of Los Angeles, to the Colorado River, has been constructed by the Southern Pacific Railroad Company within the time and in the manner provided by said act of Congress of March 3, 1871, above referred to, in which it

is therein provided for the construction of a railroad and telegraph line between said points, and that commissioners appointed by the President of the United States have reported that such railroad was constructed in all respects in compliance with said act; but your orator alleges that such claims and pretenses are unfounded, and that said Southern Pacific Railroad Company named in said act of Congress of March 3, 1871, has not constructed any railroad or telegraph line between said points within the time or manner provided by said act, nor at all.

X.

Your orator further alleges that, on December 2, 1865, a corporation was organized under the laws of the State of California by the name and style of the Southern Pacific Railroad Company, and under a general law thereof, approved May 20, 1861, entitled "An act to provide for the incorporation of railroad companies and the management of the affairs thereof, and other matters relating thereto," which said act is printed in the Statutes of California of 1861, at page 607, and to which act your orator refers.

XI.

Your orator further alleges that said corporation was formed for the purpose and with the corporate power, as stated in its articles of incorporation, of constructing, owning and maintaining a railroad from some point on the Bay of San Francisco, in the State of California, and to pass through the counties of Santa Clara, Monterey, San Luis Obispo, Tulare, Los Angeles and San

Diego, to the town of San Diego in said State; thence eastward, through said county of San Diego, to the eastern line of the State of California, there to connect with the contemplated railroad from the eastern line of the State of California to the Mississippi River.

XII.

Your orator further shows that, on October 11, 1870, said Southern Pacific Railroad Company entered into pretended articles of consolidation and amalgamation with the San Francisco and San Jose Railroad Company, a corporation organized under the laws of California with similar powers, and the Santa Clara and Pajaro Valley Railroad Company, also a corporation organized under the laws of California with similar powers, by which pretended articles of consolidation and amalgamation said several companies agreed to consolidate and amalgamate their capital stock, debts, property, assets and franchises, making a different capital, issuing new stock and creating a new and different corporation by the name and style of "The Southern Pacific Railroad Company," which pretended articles were signed, published and filed in the mode as provided by said general law of California; but your orator alleges that the articles of incorporation of said railroad companies respectively, and of neither of them, authorized said companies to consolidate or amalgamate with any other railroad company; and your orator is informed and believes, and so alleges the fact to be, that such pretended consolidation was unauthorized by the laws of the State of California and without the

consent of said State, and was unauthorized by the laws of the United States and without authority from the United States, and that such pretended consolidation was and is illegal and void.

XIII.

Your orator further alleges and shows unto the Court that, on the 12th day of August, 1873, said Southern Pacific Railroad Company, the corporation pretended to be created by said articles of consolidation and amalgamation of October 11, 1870, as aforesaid, and the Southern Pacific Branch Railroad Company, a corporation organized and existing under the laws of the State of California, formed for the purpose and with the corporate power as stated in its articles of incorporation, of constructing, owning and maintaining a railroad within the State of California, did pretend to consolidate and amalgamate their capital stock, debts, franchises and rights, and did enter into pretended articles of consolidation and amalgamation, by which said two companies agreed to amalgamate and consolidate their capital stock, debts, property, assets and franchises, creating a new capital stock and issuing new certificates of stock and purporting to create a new and different corporation by the name and style of "The Southern Pacific Railroad Company," a copy of which pretended articles of consolidation and amalgamation are hereto attached, marked Exhibit "A" and made a part hereof; and did duly sign such articles and publish and file the same as required in that respect by the laws of the State of California; but your orator al-

leges that the articles of incorporation of said two companies respectively, and neither of them, authorized or empowered said companies or either of them to enter into any consolidation or amalgamation with any other railroad company, and did not authorize them or either of them to sell or transfer its entire railroad to any other railroad company; and your orator alleges that such pretended articles of consolidation and amalgamation were illegal and void, and were unauthorized and prohibited by the laws of the State of California, and were unauthorized and prohibited by the laws of the United States; and were entered into without any authority from the Congress of the United States or any other competent authority; and by entering into such pretended articles of consolidation and amalgamation said Southern Pacific Railroad Company, which was named in said act of Congress of March 3, 1871, forfeited, abandoned and released to the United States all the lands granted by said act of Congress of March 3, 1871, and all the rights, grants, franchises and privileges conferred by said act, and all right to earn or acquire any and all lands under said act.

XIV.

Your orator is informed and believes, and so alleges the fact to be, that the Southern Pacific Railroad Company which is defendant herein, claims to have pretended patents issued by the United States in due form of law to it, said Southern Pacific Railroad Company, purporting to convey to said company a portion of the lands in suit herein, but which lands are unknown

to your orator; but your orator alleges that if any such patents were issued they were issued illegally and without any authority of law, and are illegal and void.

XV.

Your orator is informed and believes, and so alleges the fact to be, that certain of the defendants herein, but which defendants are unknown to your orator, claim to be bona fide purchasers for value from the Southern Pacific Railroad Company, the corporation named in said act of Congress of March 3, 1871, and claim that their rights to certain tracts of land are protected and confirmed by the act of Congress approved March 3, 1887, entitled "An act to provide for the adjustment of land grants made by Congress to aid in the construction of railroads, and for the forfeiture of unearned lands, and for other purposes" (See 24 Statutes, 556.)

XVI.

Your orator further alleges and shows unto the Court that defendants D. O. Mills and Garrit L. Lansing have a mortgage or deed of trust from defendant Southern Pacific Railroad Company, covering or purporting to cover the above-described lands, to secure the payment of certain indebtedness of said defendant company to them as trustees, which mortgage is dated April 1, 1875, and which is executed in due form of law and is recorded in Los Angeles and San Bernardino and Ventura Counties, in which said lands are situated and constitutes a cloud upon the title of your orator.

XVII.

Your orator further alleges that said lands above described are naturally timbered or wooded lands and valuable for the timber and wood thereon; and that defendants herein while claiming and pretending to own some interest in said lands, at various and divers times during the last five years, at many and divers times to your orator unknown, have unlawfully entered upon said lands, chopped down the timber and trees thereon, then the property of your orator, and carried away such timber and trees and converted the same to their own use, the amount and value of which is unknown to your orator, and are now removing from said lands wood cut thereon, and threatening to chop down other trees on said land, and unless enjoined will do so, to the great and irreparable injury of your orator.

XVIII.

Your orator further shows that the amount in controversy in this suit exceeds the sum or value of five thousand dollars, exclusive of interest and costs.

XIX.

Your orator is informed and believes, and so alleges the fact to be, that defendant Southern Pacific Railroad Company, while pretending and claiming to own some interest in said lands, at various and divers times during the past ten years to your orator unknown, by pretended contracts, and conveyances has pretended to sell and convey large portions of said lands to the other defendants herein, the amount and descriptions of

which are unknown to your orator, and has thus realized from wood and timber on said land large sums of money which it has appropriated and converted to its own use.

To the end, therefore, that said defendants may, if they can, show why your orator should not have the relief herein prayed, and to fully answer the premises, but not upon oath or affirmation, the benefit whereof is expressly waived by the complainant, and according to the best and utmost of their several and respective knowledge, remembrance, information and belief, full, true direct and perfect answer make to such of the several interrogatories hereinafter numbered and set forth as by the note hereinunder written, they are respectively required to answer, that is to say:

Said defendant Southern Pacific Railroad Company is required to state: (1) the names of all of the pretended purchasers of said lands or any portions thereof from said company; (2) the amounts and descriptions of lands so pretended to be sold; (3) all moneys realized from said defendants respectively by said company; (4) each and all of said defendants are required to state the nature and extent of their pretended claim or claims to said lands.

And to the further end, therefore, that plaintiff may have that relief which it can only obtain in a court of equity, and that said defendants may answer the premises, your orator prays, that, if it shall be found that commissioners, pretending to be appointed by the President of the United States for that purpose, have re-

ported that said pretended railroad and telegraph line from Tehachapi Pass, via Los Angeles, to the Colorado River, have been constructed and completed in a good, substantial and workmanlike manner as in all respects required by said act of March 3, 1871, heretofore referred to, and by such report that such pretended railroad has been pretended to be accepted by them or by the President of the United States, and that such pretended report or reports constitute a cloud upon the title of your orator to said lands, then your orator prays that such pretended report or reports may be set aside, annulled and canceled.

And your orator further prays that said articles of consolidation and amalgamation dated August 12, 1873, beween said Southern Pacific Railroad Company and said Southern Pacific Branch Railroad Company may be set aside, annulled and canceled, and that the contract of sale herein set forth, by which the Southern Pacific Railroad Company, named in said act of Congress of March 3, 1871, purports to sell and convey to the pretended consolidated company purported to be created by such articles all its rights, grants, privileges, assets and property, and all the rights, grants, privileges, property, assets and lands granted and conferred by the United States by said act of Congress of March 3, 1871, to the Southern Pacific Railroad Company therein named, may be set aside, annulled and canceled.

And your orator further prays that said mortgage and deed of trust executed by said Southern Pacific

Railroad Company, defendant herein, to D. O. Mills and Garrit L. Lansing as trustees, may be set aside, annulled and canceled.

And your orator further prays that its title to said lands may be quieted, and that defendants and each of them be barred and estopped from having, asserting or claiming any right, title or interest therein adverse to your orator; and your orator prays that said pretended patent from the United States to the Southern Pacific Railroad Company may be set aside, canceled and annulled; and that defendants be forever enjoined from chopping down or carrying away any wood, trees or timber upon said land.

And your orator further prays that an account may be taken by and under the direction and decree of this Honorable Court for all moneys and profits realized by said defendant from wood, timber, and trees taken from said land, and for all moneys and profits realized by defendant Southern Pacific Railroad Company from the pretended sale of said lands.

And your orator further prays that, if it shall be found that any of the defendants herein are bona fide purchasers for value of any of said lands within the meaning of said act of Congress of March 3, 1887, then your orator prays that such defendants may be protected in their title to said lands by decree of this Honorable Court, and that your orator may have judgment against defendant railroad company for the sum of two dollars and fifty cents per acre for all such lands, if any, which this Honorable Court may find to be held

by defendants herein as such bona fide purchasers for value.

And your orator prays for such other and further relief as the Court may deem equitable in the premises.

Your orator waives answer under oath.

JOSEPH H. CALL,

Special Asst. U. S. Attorney and Solicitor for Complainant.

W. H. H. MILLER,

Attorney General.

Exhibit "A."

Articles of association, amalgamation and consolidation made and executed on this the twelfth day of August, A. D. 1873, by and between the Southern Pacific Railroad Company, of the first part, and the Southern Pacific Branch Railroad Company of the second part:

Witnesseth: That whereas, the said party of the first part heretofore, to wit, on the eleventh day of October, A. D. 1870, was duly incorporated and organized under the laws of the State of California, by the amalgamation and consolidation of the following railroad corporations theretofore existing under the laws of said State, to wit: The San Francisco and San Jose Railroad Company, the Santa Clara and Pajaro Valley Railroad Company, the Southern Pacific Railroad Company, and the California Southern Railroad Company pursuant to articles of amalgamation and consolidation of that date by them agreed upon, which articles were subquently amended, to wit, on the eleventh day of April, A. D. 1871, by virtue of the laws of said State, where-

by said corporation became duly incorporated and organized under the laws of said State for the purpose of purchasing, constructing, owning, maintaining and operating a continuous line of railroad from the city of San Francisco in the State of California, through the city and county of San Francisco, the counties of San Mateo, Santa Clara, Monterey, Fresno, Tulare, Kern, San Bernardino and San Diego, to some point on the Colorado River in the southwestern part of the State of California, a distance of seven hundred and twenty miles, as near as may be; also a line of railroad from a point at or near Tehachapi Pass, by way of Los Angeles, to the Texas Pacific Railroad at or near the Colorado River, a distance of three hundred and twenty-four miles, as near as may be; also a line of railroad from the town of Gilroy, in the county of Santa Clara, in said State, passing through said county and the counties of Santa Cruz, and Monterey, to a point at or near Salinas City, in said last-named county, a distance of forty-five miles, as near as may be; and also such branches to said lines as the board of directors of said corporation may consider advantageous to said corporation and direct to be established.

And whereas, the said party of the second part was, heretofore, to wit, on the twenty-third day of December, A. D. 1872, duly incorporated and organized under the laws of the State of California, for the purpose of purchasing, constructing, owning, maintaining, and operating a railroad from a point on the Southern Pacific Railroad (the railroad of the party of the first part) at or

near Salinas City in the county of Monterey, southeasterly to a point in Kern county, south of Tulare Lake, intersecting the San Joaquin Valley division of the said Southern Pacific Railroad; also from a point on the above described line, at or near San Miguel in San Luis Obispo County, thence in a southerly direction to a point of intersection in Los Angeles county, with the line of the said Southern Pacific Railroad running from Tehachapi Pass by way of Los Angeles, to Fort Yuma, said road passing into or through the counties of Monterey, San Luis Obispo, Kern, Santa Barbara and Los Angeles, and said roads, in the aggregate, being, as near as may be, four hundred and twenty-eight miles in length.

And whereas, said parties believe a consolidation and amalgamation of their capital stocks, debts, properties, assets, roads, telegraphs, land and franchises, will be mutually advantageous;

And whereas, more than three-fourths in value of all the stockholders in interest of each of said parties, have consented in writing to such amalgamation and consolidation upon the terms and conditions hereinafter set forth:

Now, therefore, under and by virtue of the statute of the State of California, in such case made and provided, the said parties do hereby mutually covenant and agree, each with the other, to the following articles, to wit:

Article First: Said parties do hereby amalgamate and consolidate themselves into a new corporation,

under the name and style of the Southern Pacific Railroad Company, which new corporation shall continue in existence for the period of fifty years from the date of these articles;

And they do further consolidate and amalgamate their several capital stocks, debts, properties, assets, roads, telegraphs, lands, franchises, rights, titles, privileges, claims and demands of every kind whatsoever, as well in possession as in expectancy, at law or in equity, and do grant, convey and vest the same in the said new corporation, as fully as the same are now severally held and enjoyed by them respectively, subject, however, to all conditions, obligations, stipulations, contracts, agreements, liens, mortgages, encumbrances, judgments, claims and charges thereon or in anywise affecting the same or any part thereof.

Article Second: The object and purpose of said new corporation shall be to purchase, construct, own, maintain and operate the several lines of railroad hereinbefore described, to wit: a line of railroad from the city of San Francisco, in the State of California, through the city and county of San Francisco, the counties of San Mateo, Santa Clara, Monterey, Fresno, Tulare, Kern, San Bernardino and San Diego, to some point on the Calorado river, in the southeastern part of the State of California, a distance of seven hundred and twenty miles, as near as may be, also a line of railroad from a point at or near Tehachapi Pass, by way of Los Angeles to the Texas Pacific Railroad at or near the Colorado river, passing through the counties of Los Angeles, San

Bernardino and San Diego, a distance of three hundred and twenty-four miles, as near as may be; also a line of railroad from the town of Gilroy, in the county of Santa Clara in the same State, passing through said county and the counties of Santa Cruz and Monterey, to a point at or near Salinas City in said last named county, a distance of forty-five miles, as near as may be; also a line of railroad from a point on the line thirdly above described at or near Salinas City, county of Monterey, southeasterly through said county and into Kern county, to a point south of Tulare Lake in said last named county, intersecting at said point the line of railroad first above described, a distance of one hundred and eighty miles, as near as may be; also a line of railroad from a point on the last above described line, at or near San Miguel in the county of San Luis Obispo; thence in a southerly direction through said county, the county of Santa Barbara and into the county of Los Angeles to a point of intersection with the line of railroad secondly above described, to wit: the line from Tehachapi Pass by way of Los Angeles to the Texas Pacific Railroad at or near the Colorado river, a distance of two hundred and forty miles, as near as may be; making in all fifteen hundred and nine miles, as near as may be, and such branches to said lines as the board of directors of said new corporation may hereafter from time to time establish.

Article Third: The board of directors of said new corporation shall consist of seven persons and the following named persons shall act as such director until

their successors shall have been duly elected pursuant to the by-laws of said new corporation, hereafter to be adopted, viz: C. P. Huntingtoin, D. D. Colton, Robert Robinson, Charles Mayne, S. T. Gage, E. N. Miller, Jr., and J. L. Willcutt.

Article Fourth: The capital stock of said new corporation shall be ninety million dollars divided into nine hundred thousand shares of one hundred dollars each, that sum being the contemplated actual cost of said railroads, including telegraph lines, rolling stock, motive power, shops, depots, etc.

Article Fifth: Each stockholder of each said parties shall have the same number of shares of capital stock of the new corporation which he now owns and holds of the capital stock of his respective company, upon the same terms and conditions, and shall be entitled to receive from said new corporation certificates therefor, where the same has been fully paid up, upon the surrender of the certificate now held by him, and where the same has not been fully paid up, he shall receive such other evidence of his ownership as the board of directors of said new corporation shall direct upon the surrender of such evidence of his ownership of such unpaid stock as he may now hold.

Article Sixth: And the said several parties of the first and second parts, each for itself, hereby sell, assigns, transfers, grants, bargains, releases and conveys to the said new and consolidated company and corporation, its successors and assigns forever all its property, real, personal and mixed of every kind and description; all

its capital stock, all its interest in the shares of its capital stock subscribed but not fully paid for; all credits, effects, judgments, decrees, contracts, agreements, claims dues and demands of every kind and description, and all rights, privileges and franchises, corporate and otherwise, held, owned or claimed by said parties of the first and second parts, or either of them, in possession or expectancy, either at law or in equity, subject, however, to all conditions, obligations, stipulations, contracts, agreements, liens, mortgages, encumbrances, claims and charges thereon, or in anywise affecting the same.

Article Seventh: The said new and consolidated company and corporation is to be liable for and shall fulfill, perform, do and pay all and each of the contracts and agreements, covenants, duties, obligations, liabilities, debts, dues and demands of the said several parties of the first and second parts, but this amalgamation and consolidation shall not in any way relieve the said parties of the first and second parts, or the stockholders thereof from any and all just liabilities.

In testimony whereof, the said party of the first part has caused this instrument to be signed by its vice-president (the president being absent) and its secretary, and its corporate seal to be thereunto affixed, and the said party of the second part has caused this instrument to be signed by its president and secretary and its corporate seal thereunto affixed, in pursuance of orders

and resolutions of their several boards of directors, made on the twelfth day of August, 1873.

SOUTHERN PACIFIC RAILROAD COMPANY,

[Seal] By DAVID D. COLTON,
Vice-President.

J. L. WILLCUTT,
Secretary.

SOUTHERN PACIFIC BRANCH RAILROAD COMPANY,

[Seal] By B. R. CROCKER,
President,

By E. H. MILLER, Jr.,
Secretary.

We, the undersigned, being the holders of stock to the extent of more than three-fourths of the value of all stockholders in interest of said Southern Pacific Railroad Company, party of the first part, to the foregoing new articles of association, amalgamating and consolidating the said parties of the first and second parts, hereby consent to such amalgamation and consolidation and to the said new articles of association, this twelfth day of August, A. D. 1873.

LELAND STANFORD,
CONTRACT & FINANCE CO.
Pr. W. E. BROWN, Secy.

MARK HOPKINS.
ROBERT ROBINSON.
S. T. GAGE.
CHAS. MAYNE.
DAVID D. COLTON.
J. L. WILLCUTT.
E. H. MILLER, Jr.

We, the undersigned, being the holders of stock to the extent of more than three-fourths of the value of all stockholders in interest of the said Southern Pacific Branch Railroad Company, party of the second part to the foregoing new articles of association, amalgamating and consolidating the said parties of the first and second parts, hereby consent to such amalgamation and consolidation, and to the said new articles of association, this twelfth day of August, A. D. 1874.

LELAND STANFORD.
E. H. MILLER, Jr.
ALBERT GALLATIN.
MARK HOPKINS.
E. W. HOPKINS.
C. H. CUMMINGS.
B. R. CROCKER.

State of California,
Department of State. }

I, W. C. Hendricks, Secretary of the State of California, do hereby certify that I have carefully compared the annexed copy of articles of association, amalgamation and consolidation, between the Southern Pacific Railroad Co., and the Southern Pacific Branch Railroad Co., with the original now on file in my office, and that the same is a correct transcript therefrom and of the whole thereof. Also, that this authentification is in due form and by the proper officer.

Witness my hand and the great seal of State, at office

in Sacramento, California, the 5th day of September, A. D. 1890.

[Seal] W. C. HENDRICKS,
Secretary of State.
By H. B. DAVIDSON,
Deputy.

[Endorsed]: No. 184. In U. S. Circuit Court, Southern Dist, of Cal. United States vs. Southern Pacific Railroad Company et al. Amended Bill. Received copy of within amended bill for J. D. Redding, Solicitor for Defendants in pursuance of Rule 49 of the Circuit Court, Wm. M. Van Dyke, Clerk. Filed September 25th, 1891. Wm. M. Van Dyke, Clierk. Joseph H. Call, Sol. for Compl.

In the Circuit Court of the United States, Ninth Circuit, Southern District of California.

THE UNITED STATES OF AMERICA,
Complainant,

vs.

THE SOUTHERN PACIFIC RAILROAD COMPANY and D. O. MILLS and GARRIT L. LANSING, Trustees, THE CITY BRICK COMPANY, ATLANTIC & PACIFIC FIBRE IMPORTING AND MANUFACTURING COMPANY, LIMITED, JULIUS ABRAHAMSON, HUGO ABRAHAMSON, MRS. JESUS ORD de ANDRADE, MRS. THOMAS ALLISON, MRS. MARY BACKMAN, MRS. MATILDA L. BARBER, HENRY A. BARCLAY, E. T. BARBER, THOMAS N. BECK, A. M. BENHAM, JESSE MARTIN BLANCHARD,

E. H. BLOOD, IRA H. BRADSHAW, B. B. BRIGGS, PHILOMELA T. BURRELL, FREDERICK H. BUSBY, A. W. BUTLER, H. A. BOND, WILLIAM H. CARLSON, V. E. CARSON, B. F. CARTER, HARRY CHANDLER, FRED CHANDLER, WALTER S. CHAFFEE, J. N. CHAPMAN, F. O. CHRISTENSEN, MRS. L. C. CHORMICLE, BYRON O. CLARK, GEORGE CLAUSSEN, CLARENCE T. CLEVE, NICHOLAS COCHEMS, NATHAN COLE, Jr., PETER COOK, I. D. CORY, SEATON T. CULL, STEFANO CUNEO, J. A. DAHL, ANDREW J. DARLING, THOMAS A. DELANO, RICHARD DILLON, JOHN DITTER, DAVID DOLBEEN, JOHN F. DUEHREN, JAMES F. DUNSMOOR, EDWARD G. DURANT, ROBERT DUNN, HENRY ELMS, FAIRMONT LAND AND WATER COMPANY, FARMING AND FRUIT LAND COMPANY, GEORGE W. FENTRESS, S. W. FERGUSON, WILLIAM FERGUSON, WILLIAM FREEMAN, JOSEPH W. FURNIVAL, J. GARBER, F. C. GARBUTT, J. DREW GAY, F. A. GEIER, AMBROSE F. GEORGE, WILL D. GOULD, MRS. MARY L. GOULD, THOMAS E. GOULD, JAMES GRETON, W. F. GROSSER, D. J. HAINES, HERMAN HAINES, JAMES M. HAIT, SIMEON HAMBERG, JACOB HARPE, ALICE A. HALL, CALVIN HARTWELL, WILLIAM T. HAMILTON, JAMES HAMILTON, PETER HAMILTON, JOHN C. HASKELL, JOHN C. HAY, MARY

JACKSON HALL, JULIUS HEYMAN, J. M. HILL, JOHN D. HOFFMAN, AUGUST HOELLING, J. F. HOLBROOK, W. R. HUGHES, GEORGE A. HUNTER, J. F. HOUGHTON, E. J. ISMERT, W. W. JENKINS, THOMAS J. JOHANNSEN, M. D. JOHNSON, JOHN J. JONES, A. S. JOSEPH, JOHN KENEALEY, FREDERICK KENWORTHY, RICHARD KICHLINE, JOSEPH KURTZ, CHARLES KUTSCHMAR, MRS. AMMORETTA J. LANTERMAN, THOMAS B. LAWHEAD, L. B. LAWSON, M. LA FETRA, STEPHEN L. LEIGHTON, JOHN ROBERTS and G. L. MESNAGER, Executors of the Last Will and Testament of MIGUEL LEONIS, Deceased, GEORGE LOOMIS, MARION C. LOOP, PABLO LOPEZ, DANIEL LUCE, G. W. MACK, JOHN B. MARTIN, CORA L. MATHIASON, EZRA MAY, ANGUS S. McDONALD, A. M. MELROSE, MRS. FLOSSIE MELROSE, W. E. McVAY, THOMAS MENZIES, J. G. MILLER, JOHN MILLION, MRS. MAMIE O. MILLION, H. H. MIZE, THOMAS F. MITCHELL, W. H. MOSELEY, L. E. MOSHER, JOSEPH MULLALLY, ANDREW MYERS, D. C. NEWCOMB, ALBERT E. NETTLETON, NORTH PASADENA LAND AND WATER COMPANY, JAMES O'REILLY, GEORGE L. OTT, PACIFIC COAST OIL COMPANY, J. H. PAINTER, M. D. PAINTER, MRS. ANNIE PALEN, J. R. PALLETT, W. H. PALLETT, T. A. PALLETT, C. O.

PARSONS, F. W. PATTEE, JAMES PEIRANO, JOHN J. PECKHAM, RAMON PEREA, DANIEL PHELAN, EDWARD E. PERLEY, McH. PIERCE, WILLIAM PISCH, R. M. POGSON, A. W. POTTS, LAFAYETTE S. PORTER, A. J. PRASTER, F. H. PRESCOTT, LEWIS H. PRICE, CHARLES RAGGIS, WILLIAM B. RALPHS, JAMES B. RANDOL, C. P. RANDOLPH, F. M. RANDOLPH, FRANCISCO REAL, GEORGE H. REED, JOHN REA, OTTO RINDERKNECHT, FELIPE RIVERA, JAMES ROBERTSON, GEORGE D. ROWAN, S. D. SAVAGE, JACOB SCHERER, GEORGE W. SEIFERT, LUCIANO SEQUOIS, HENRY C. SHEARMAN, HENRIETTA SHIRPSER, REBECCA JETTA SHIRPSER, DAVID SHIRPSER, MAX SHIRPSER, GIANBATISTA SINACO, J. S. SLAUSON, J. WALLEN SMITH, MRS. MAGGIE SMITH, E. SOMMER, W. A. SPENCER, H. G. STEVENSON, H. J. STEVENSON, M. W. STIMSON, ROBERT STRATHEARN, R. P. STRATHEARN, ELEANOR SUSSMAN, D. M. SUTHERLAND, JOHN SWEENEY, W. H. TAGGART, JAMES P. TAYLOR, MARY S. TONGIER, JAMES R. TOWNSEND, MRS. C. L. TRUE, L. TUNISON, J. S. TURNER, GEORGE S. UMPLEBY, F. VEYSETT, GEORGE VILAS, ALDEN R. VINING, DANIEL A. WAGNER, S. A. WALDRON, W. W. WALLACE, C. H. WATTS, MRS. JULIA J. WHEELER, A. C.

WHITACRE, M. L. WICKS, MOYE WICKS, MRS. JENNIE L. WICKS, MARY C. WILLIAMS, C. N. WILSON, R. N. C. WILSON, J. YOUNGBLOOD,

Answer to Amended Bill of Complaint.

Now come the respondents in the above-entitled cause and for answer to the amended bill in equity, filed herein on the 26th day of September, 1891, against them, purporting to be a bill brought by the United States, by the Attorney General thereof, and signed by Joseph H. Call, as Special Assistant United States Attorney and counsel for complainant, and to so much and such parts of said bill as they are advised it is material for them to make answer unto, answering, say:

I.

That said respondents aver that the Southern Pacific Railroad Company, respondent herein, is a corporation, organized and existing under and by virtue of the laws of the State of California, as hereinafter stated, and a citizen of said last-mentioned State.

And the said respondents admit that the lands described in said bill were acquired by the United States of America from Mexico, in or about the year 1846, and the title to said lands was confirmed to the United States by the treaty of Guadaloupe Hidalgo in the year 1848. The said respondents deny that such lands or any thereof ever since such acquisition or confirmation of title thereof have been, or at the time of, or at any time since, the filing of

the bill of complaint in this suit were or have been or are now owned by the United States by title in fee simple or otherwise; they deny that the complainant during said times or at the time or at any time since the filing of the bill of complaint in this suit was, or has been or that it now is, in possession thereof, and allege on the contrary that the said lands described in the said bill, long before the filing of said bill have been granted by the complainant to the respondent, the Southern Pacific Railroad Company, and for the most part, if not entirely, were in its possession, or the possession of its grantees, so far as any person or party was in actual possession thereof.

II.

The said respondents admit that by an Act of Congress approved July 27, 1866, entitled "An act granting lands to aid in the construction of a railroad and telegraph line from the States of Missouri and Arkansas to the Pacific Coast," Congress incorporated the Atlantic and Pacific Railroad Company and granted to said company, to aid in the construction of a railroad and telegraph line in said act described, a large quantity of public lands, but it avers that such grant was made on and subject to the conditions and to the limitations in said act mentioned, to which said act of Congress reference is hereby made. (U. S. Stats. Vol. XIV, p. 292.) The said respondents admit that sections 3 and 18 of said act of Congress are correctly set forth and recited in said bill; but by reason of the insufficiency of said recitals, this defendant refers to the whole of said act of Congress, and the said respondents admit that the said Atlantic and

Pacific Railroad Company duly accepted said grant, and began to construct said road in the State of Missouri, but they deny that it ever proceeded to or did construct any portion of said road in the State of California.

And the said respondents deny that said Atlantic and Pacific Railroad Company did locate on the ground or designate upon a plat or map the whole of said line of railroad, under or in accordance with said act, from Springfield, Missouri by way of the points and places named in said act, in the time and manner provided in said act, or otherwise to the Pacific Ocean, and deny that it ever lawfully located or designated any part of said line in the State of California; and deny that on or about the —— day of ————, 1866, or at any other time, said company did file any such plat in the office of the commissioner of the general land office, and deny that at that or any such time, any such designation or location of said line of railroad was approved by the Secretary of the Interior and deny that the odd sections of public lands for thirty miles on each side of said road (as authorized to be constructed by said act) were withdrawn from market or reserved from sale, and deny that the lands in suit herein or any of them fell within the twenty-mile limits of any such line or were ever lawfully withdrawn from market or reserved for or for the benefit of said Atlantic and Pacific Railroad Company.

The said respondents aver that the said Atlantic and Pacific Railroad Company never made any definite location of its railroad in California nor constructed any part of a railroad in California nor constructed any part of a railroad in said State under or according to the act

of Congress approved July 27th, 1866, or any amendments, modifications or supplements thereto, or otherwise howsoever.

The pretended location of a route by said Atlantic and Pacific Railroad Company in California never was or became a definite location, or anything else than an attempted designation of a general route for a railroad nor did the Secretary of the Inerior ever undertake to accept such pretended location as anything else than a designation of a general route, and no right to or interest in any public lands was acquired by said railroad company by reason of any such designation or attempted designation or any act of acceptance thereof; and the decision of a Secretary of the Interior holding that such a general route was authorized by the act of Congress, approved July 27, 1866, was in contravention of a previous decision of a prior Secretary of the Interior to the contrary effect, and subsequently thereto and prior to the institution of this suit was reversed by the decision of a subsequent Secretary of the Interior, holding that the said Atlantic and Pacific Railroad Company was not entitled to construct a line to San Francisco, which last-mentioned decision still remains in full force and effect, so far as the Interior Department is concerned; and as this defendant is advised and believes and therefore avers, the decision of a Secretary of the Interior undertaking to accept from the Atlantic and Pacific Railroad Company a designation of a general route for a railroad upon the route referred to, was unauthorized and void. These respondents ask leave to refer to said decisions and to file copies thereof herein, if deemed necessary.

That respondents admit and aver that the lands in suit herein are situated within twenty miles of the pretended line of general route of said Atlantic and Pacific Railroad and mostly within twenty miles of the Southern Pacific Railroad and that all thereof are within thirty miles of said Pacific Railroad. ,

The said respondents deny that the said Atlantic and Pacific Railroad Company was authorized by said act or any other act of Congress to locate or construct a line of railroad from the crossing of the Colorado River to San Francisco; they are advised and believed and therefore aver that under said act of Congress, the respondents, the Southern Pacific Railroad Company, alone was authorized to construct a line of railroad from the crossing of the Colorado River to San Francisco, and to acquire lands under said act of Congress along and opposite said line.

III.

The said respondents admit that by Section 23 of an Act of Congress, approved March 3, 1871 (U. S. Stat., Vol. 16, p. 573), entitled "An act to incorporate the Texas and Pacific Railroad Company and to aid in the construction of its road and for other purposes," it was provided as follows:

"Sec. 23. That, for the purpose of connecting the Texas Pacific Railroad with the city of San Francisco, the Southern Pacific Railroad Company of California is hereby authorized (subject to the laws of California) to construct a line of railroad from a point at or near Tehachapi Pass, by way of Los Angeles, to the Texas Pacific Railroad, at or near the Colorado River, with the same rights,

grants and privileges, and subject to the same limitations, restrictions and conditions as were granted to said Southern Pacific Railroad Company of California by the act of July twenty-seven, eighteen hundred and sixty-six: provided, however, that this section shall in no way affect or impair the rights, present or prospective, of the Atlantic and Pacific Railroad Company, or any other railroad company."

IV.

The said respondents admit that by the act of Congress, approved July 6, 1886, entitled "An act to forfeit the lands granted to the Atlantic ad Pacific Railroad Company to aid in the construction of a railroad and telegraph line from the States of Missouri and Arkansas to the Pacific Coast, and to restore the same to settlement and for other purposes," all the lands and rights to lands in California theretofore granted or conferred upon said Atlantic and Pacific Railroad Company were declared forfeited and restored to the public domain. They pray leave to refer to said act, but they deny that the same in anywise operated to forfeit or resume or restore to the public domain any lands as against these respondents. They admit and aver that no part of said Atlantic and Pacific Railroad had at the time of the passage of said act of 1886, or has at any time since been constructed in the State of California.

V.

The said respondents admit that they claim ownership in themselves and their grantees of the lands described in the bill of complaint, and they admit that they claim the

same, and aver that they acquired and became entitled to said lands, under and by virtue of the act of Congress of March 3, A. D. 1871, and the grant to the Southern Pacific Railroad Company therein contained, and they admit that they claim, and they aver the fact to be, that the said Southern Pacific Railroad Company duly accepted the said grant and the terms and conditions thereof and duly located the route and line of its road between the points in that behalf mentioned in said act and within the time and manner in said act provided on that behalf, such location being made by map or plat thereof, which it filed in the office of the commissioner of the general land office on the 3d day of April, 1871, and they pray leave to refer to said map or plat when the same shall be produced in this suit.

They deny that the located line or route of the said Southern Pacific Railroad Company, as aforesaid, lies upon the same line as any lawfully designated line or general route of the Atlantic and Pacific Railroad Company, and deny that the lands in suit herein would be at any place where the located line of the Southern Pacific Railroad Company and any lawfully designated line of the Atlantic and Pacific Railroad Company would be upon the same general line or would have intersected each other. They deny that the line or route from Tehachapi Pass by way of Los Angeles to a point at or near the Colorado river, located by the Southern Pacific Railroad Company, as aforesaid, was or is upon the same general line as the line or general route attempted to be designated by the Atlantic and Pacific Railroad Company or any line or

route which could have been lawfully designated by said Atlantic and Pacific Railroad Company under the act of Congress of July 27, 1866, above referred to or otherwise.

They deny that any line or route of the Atlantic and Pacific Railroad Company has ever been lawfully located in the State of California or any limits of the grant for such company ever lawfully fixed or in any wise defined, and deny that the lands in suit fall within any limits of any grant to the Atlantic and Pacific Railroad Company, They deny the allegation in said bill contained that none of said lands were covered by the grant to the Southern Pacific Railroad Company and that none of said lands were of the category of lands which were to be granted to said company, and each of them, and aver the contrary thereof.

And these respondents further show that upon the filing by said Southern Pacific Railroad Company of the map or plat of its line on said 3d, day of April, 1871, as hereinbefore stated, the Secretary of the Interior, under date of April 3, 1871, directed the commissioner of the general land office to withdraw the granted lands along the route of said railroad as designated on said map from pre-emption, private entry and sale, and the commissioner of the general land office, under date of April 21, 1871, issued instructions to the registers and receivers of the proper United States District Land Offices in California to withdraw from sale or location, pre-emption or homestead entry all the odd-numbered sections of public lands within thirty miles of the said line of said railroad and these respondents aver that all the lands mentioned in the bill of complaint in this suit which were public lands at the

date of such orders for withdrawal, were thereupon withdrawn according to said instructions. Certified copies of said orders of withdrawal are hereto annexed and made parts of this answer, marked Exhibit ——, a certified copy of the official diagram defining and marking the twenty and thirty miles limits opposite said railroad is herewith filed and made part of this answer, marked Exhibit "—."

These respondents aver that the line of route of the Southern Pacific Railroad through said lands had been duly located, and the lands granted to it by said 23d section of the said act of March 3, 1871, had been duly withdrawn from market for the benefit of the respondent, the Southern Pacific Railroad Company, before the said Atlantic and Pacific Railroad Company attempted to locate its general route for its road through or opposite to the said lands, or any part of such general route.

And these respondents aver that the respondent herein, the Southern Pacific Railroad Company, under and in fulfillment of the provisions of the said act of Congress hereinbefore cited, duly located, constructed and completed its said railroad from a point near Tehachapi Pass, by way of Los Angeles, to the Colorado river and commissioners appointed by the President of the United States duly reported the fact of such completion, and said railroad was from time to time duly approved and accepted by the President of the United States.

And these respondents ask leave to refer to and exhibit herein, certified transcripts from the Department of the Interior at Washington, to show the action of said commis-

sioners and of the President of the United States in this matter.

VI.

These respondents allege that the line of route for the said railroad from Tehachapi Pass, by way of Los Angeles, to a point near the Colorado river and for all the route between the terminal points named in said act of Congress, has been located and constructed by the Southern Pacific Railroad Company in accordance with the said act of Congress and they deny that said line of route is upon the same general line as the pretended route of the Atlantic and Pacific Railroad in California, and the said respondents claim and aver that the lands described in the said bill of complaint were and are of the category of lands granted to the said Southern Pacific Railroad Company and were, and are, sections and parts of sections of odd numbers, and within the limits of said grant.

VII.

These respondents admit that the lands in suit are situated within twenty miles of the pretended general or preliminary route of the said Atlantic and Pacific Railroad, but they deny that they are situated within twenty miles or any other distance, of any lawfully designated route of said railroad company or within any lawful limits of any grant to said company. They admit that as to the actual mineral character of said lands they were in the same condition in respect to minerals in the whole of the year A. D., 1866, that they were and have been all the time from that year down to and including the 3d day of

April, 1871, but they are uninformed as to whether there were changes during such period in the knowledge or understanding, or general knowledge or understanding as to the mineral character thereof.

VIII.

Replying to paragraph eight of the bill of complaint these respondents deny the allegations of said paragraph and each of such allegations, and aver that their claim to the lands in suit herein is legal and valid and founded upon express grant thereof to the said Southern Pacific Railroad Company from the complainant, and as to some of said lands they ask leave to refer to and show a patent or patents thereof to said Southern Pacific Railroad Company from the Government of the United States, legally issued and duly authenticated.

IX.

These respondents admit that they claim, and they aver the fact to be, that a line of railroad and telegraph from Tehachapi Pass, by the way of Los Angeles, to the Colorado river has been constructed by the respondent, the Southern Pacific Railroad Company, within the time and in the manner provided by said act of Congress of March 3, 1871, herein referred to, and that commissioners appointed by the President of the United States have reported that such railroad was constructed in all respects in compliance with said act and these respondents ask leave to refer to the reports of the commissioners now on file in the Department of the Interior in Washington City, and to produce and file herein certified copies of said re-

ports. They deny that any such claims are unfounded and aver that the Southern Pacific Railroad Company named in said act of Congress of March 3, 1871, did construct the said railroad and telegraph line between said terminal points within the time and in the manner provided by said act of Congress and deny the averments to the contrary thereof in said bill contained.

X.

These respondents admit that on or about the 2d day of Decemebr, 1865, a corporation was organized under the laws of the State of California under the corporate name and style of the Southern Pacific Railroad Company, and under a general law of said State, approved May 20, 1861, entitled, "An act to provide for the incorporation of railroad companies and the management of the affairs thereof and other matters relating thereto." It admits that said act is printed in the Statutes of California, 1861, at page 607, and prays to refer thereto.

XI.

These respondents admit that the said corporation, "The Southern Pacific Railroad Company," was formed for the purpose and with the corporate powers, as stated in the articles of incorporation, of constructing, owning and maintaining a railroad from some point on the bay of San Francisco, in the State of California, and to pass through the counties of Santa Clara, Monterey, San Luis Obispo, Tulare, Los Angeles, and San Diego, to the town of San Diego in said State; thence eastward to said county of San Diego to the eastern line of

the State of California there to connect with a contemplated railroad to the Mississippi River; and they refer to said articles of incorporation for the precise contents, purport and effect thereof.

XII.

These respondents aver that on or about the 11th day of October, A. D. 1870, under and by virtue of the general laws of the State of California on that behalf, the said Southern Pacific Railroad Company, the San Francisco and San Jose Railroad Company, the Santa Clara and the Pajaro Valley Railroad Company, corporations organized and existing under the laws of California, entered into real and not pretended articles of consolidation and amalgamation, consolidating and amalgamating their capital stocks, debts, property, assets and franchises under the name of the Southern Pacific Railroad Company, in the manner provided by the laws of California. They admit and aver that such articles were signed, published and filed as provided by the laws of California.

They pray leave to refer to such articles of consolidation and amalgamation, if material to any purposes of this suit, and to the laws of California, authorizing the same, and to the laws of California affecting the corporations aforesaid or any of them and to the amendatory articles of the Southern Pacific Railroad Company filed ————. They deny that by any such articles or agreement of consolidation and amalgamation, or by any consolidation or amalgamation a different capital was made, any substantially new stock issued or a new or

different corporation created, but on the contrary, they aver that the corporation thereafter existing was a consolidation and amalgamation of the theretofore existing corporations and not a newly created corporation. They pray leave to refer to the articles of incorporation of the consolidating companies if in any wise material to this suit. They allege that said consolidation and amalgamation of said corporations were authorized by the laws of California and by the laws of the United States so far as applicable, and were, and are, legal and valid, and deny all allegations in said bill to the contrary thereof.

XIII.

These respondents aver that on or about the 12th day of August, 1873, under and by virtue of the laws of the State of California on that behalf, the said Southern Pacific Railroad Company as it existed after the said consolidation and amalgamation of 1870, and composed of the consolidated and amalgamated companies above referred to and the Southern Pacific Branch Railroad Company, a corporation organized and then existing under the laws of California, formed for the purpose and with the corporate powers stated in its articles of incorporation of constructing, owning and maintaining a railroad within the State of California, did consolidate and amalgamate their capital stock, debts, property, assets and franchises under the name and style of the Southern Pacific Railroad Company and entered into articles of consolidation and amalgamation of which Exhibit "A" attached to the plaintiff's bill is a copy, and

that said articles were duly signed, published and filed as required by the laws of California. They pray leave to refer to such articles so far as material to this suit, and to the laws of California authorizing the same. They aver that such consolidation and amalgamation and such articles were real and not pretended and deny that by such articles of agreement of consolidation and amalgamation or by any consolidation and amalgamation a new capital stock or a new or different corporation was created, or purported to be created, but they aver that the corporation thereafter existing was a consolidation and amalgamation of the theretofore existing corporations and not a newly created corporation.

As to the contents, purport and effect of the articles of incorporation of the consolidating companies they pray leave to refer to the same if in anywise material to this suit.

These respondents deny that such articles of consolidation and amalgamation were illegal or void or unauthorized or prohibited by the laws of the State of California or were unauthorized or prohibited by the laws of the United States or were entered into without competent authority, but on the contrary they aver that the consolidation and amalgamation of said railroad companies was made in conformity with the laws of the State of California whose action in that behalf was fully authorized and recognized by the Congress of the United States and that such consolidation and amalgamation was and is in all respects valid.

These respondents deny that by entering into said

articles of consolidation and amalgamation the said Southern Pacific Railroad Company named in the act of Congress, of March 3, 1871, forfeited, abandoned or released to the United States all or any part of the lands granted to it by said act of Congress or all or any rights, grants, franchises or privileges conferred by said act, or all or any right to earn or acquire any and all lands under said act.

XIV.

These respondents admit that the Southern Pacific Railroad Company which is defendant herein claims to have, and they aver that it has, patents issued by the United States to it in due form of law, purporting to convey and conveying to said Company a portion of the lands in suit herein. It avers that said patents were real and not pretended and were duly recorded in the recorder's division in the general land office before they were delivered to said company and still remained so of record, and since the delivery thereof, the same have been recorded in the counties of Los Angeles and —— in the State of California.

These respondents deny that the lands thus patented are unknown to the complainant, and deny that the patents therefor were issued illegally or without authority of law or are illegal or void. On the contrary, these respondents allege that said patents are in all respects legal and valid, and they ask leave here to refer to the same, and to present and file as evidence in this suit, duly certified copies thereof, if deemed necessary.

XV.

Relying to paragraph XV of the complainant's bill these respondents say that they have no knowledge as to which, if any, of the co-defendants herein claim any right in the lands in suit, or any part or parcel thereof, under or by virtue of an act of Congress, approved March 3, 1887 (24 Stat. 556), referred to in the bill of complaint, but they aver that none of the defendants other than the Southern Pacific Railroad Company are entitled to such lands or any part thereof, except as far as they may be entitled thereto as mortgagees, grantees or vendees of the Southern Pacific Railroad Company under conveyances, mortgages or agreements from it in that behalf.

XVI.

These respondents admit that the respondents D. O. Mills and Garrit L. Lansing, have a mortgage or deed of trust from the Southern Pacific Railroad Company for the above-described land to secure the payment of certain indebtedness of said defendant railroad company, and that said mortgage is dated April 1, 1875, and is executed in due form of law, and is recorded in Los Angeles and San Bernardino and Ventura Counties, California, where the same has been of record since 1875, but they deny that complainant has any title to said lands or any part thereof which can be clouded or injuriously or otherwise affected thereby.

XVII.

They admit that the lands described in said bill are to a considerable extent naturally timbered or wooded land

and valuable for the timber and wood thereon. While admitting that they claim but denying that they pretend to own an interest in said lands these defendants deny that they or their grantees have ever unlawfully entered on said lands or unlawfully chopped down any timber or trees thereon and deny that said lands, timber or trees or any thereof, were at any time since the taking effect of the grant to the defendant the Southern Pacific Railroad Company, above referred to the property of the complainant in this suit. They admit and aver that the Southern Pacific Railroad Company and its grantees have at various and divers times carried away timber and trees from said lands and applied the same to their own use and are now removing from said land wood cut thereon and are intending to and unless enjoined therefrom will chop down other trees on said land, but they deny that any such act were, are or will be in any wise unlawful or have resulted or will or could result in any injury to the complainant.

XVIII.

They admit that the amount in controversy in this suit exceeds the sum or value of five thousand dollars exclusive of interest and costs.

XIX.

They admit and aver that the defendant the Southern Pacific Railroad Company while claiming (but not pretending) to own any interest in said lands, has at various and divers times during the past ten years by actual (but not pretended) contracts and conveyances sold and conveyed (but not pretended to sell or convey) large

portions of said lands to other of the defendants herein, and by itself and its grantees has realized from wood and timber on said lands considerable sums of money which it and they have appropriated to its and their own use.

XX.

The respondent, the Southern Pacific Railroad Company, further answering states that the schedule hereto annexed, marked Exhibit "B," and made part of this answer, is a correct schedule of all such lands claimed in this suit as the said respondent has sold prior to the filing of the bill of complaint herein, together with the names of the parties who were the purchasers, and the amounts of money received by the said respondent, upon the contract of sale to each purchaser respectively, and it avers that at the time of such sales and each of them the said defendant railroad company was the owner of the lands so sold, and that it is now the owner of all of such lands which have not been so sold by it.

XXI.

And all of the respondents herein, other than the Southern Pacific Railroad Company, D. O. Mills and Garrit L. Lansing, admit and allege that they and each of them claim to be bona fide purchasers for value, from the said Southern Pacific Railroad Company and its grantees, which are also purchasers in good faith, but not otherwise, of all of the lands hereinbefore specifically described and set forth in Schedule "B" as having been sold by the respondent the Southern Pacific Railroad Company and that they purchased the same

in good faith and for a valuable consideration, believing and still believing that at the time of their said purchase of said lands they were owned by absolute title in fee simple by said Southern Pacific Railroad Company and its said grantees.

That attached hereto and made a part of this answer are several exhibits which respondents ask may be taken as a part of the answer and referring thereto and to each and every allegation to which said exhibits are pertinent, namely:

Exhibit "A," being certified copy of a letter from Willis Drummond, commissioner of the general land office, dated April 21, 1871, to the register and receiver, Los Angeles, California, order of withdrawal of lands within the limits of the Southern Pacific Railroad Company's Branch Line:

Exhibit "B," referred to on page 22 of the answer being a statement, under date of July 3, 1890, of the condition of the books of the Land Department of the Southern Pacific Railroad Company of lands involved in said suit, tabulated under the following headings: "Contract No. Contract dated. Purchaser. Address, Fraction. Sec. Twp. Rge. Acres. Amount sold for. Surveyed or unsurveyed. A. & P. R. R. Co., Limits. S. P. R. R. Limits. Main, Branch-line. Selected or not selected by S. P. R. R. Co. No. and date of selection list. Costs of surveying, selecting and conveying which is divided into three colums as follows: Surveying fees, selecting, Reg. and Rec. fees, costs of conveying. Remarks.

Exhibit "C," Certified copy of List No. 21 of lands

selected by the Southern Pacific Railroad Company within the granted limits of the grant made by the 23d section of the act of Congress approved March 3, 1871, on account of the line known as the branch-line of said Southern Pacific Railroad, Company, which lands are situate in the Los Angeles, California Land District.

Exhibit "D." Certified copy of list numbered 25, of lands selected by the Southern Pacific Railroad Company within the indemnity limits grant made by the 23d section of the act of Congress approved March 3, 1871, on account of the line known as the branch-line of said Southern Pacific Railroad Company, which lands are situate in the Los Angeles, California Land District; together with the designation of losses stated as a basis for such selections; also supplemental list of losses.

Exhibit "C-2." Certified copy of a letter to the commissioner of the general land office, January 19th, 1889, by Henry Beard, attorney for the Southern Pacific Railroad Company of California; also copy of certificate of deposit No. 1431 of the National Bank of the Republic, Washington, D. C., dated January 19th, 1889, by said railroad company of $12.50 on account of conveying the lands located at the Los Angeles, California Land Office, at Los Angeles, California, List No. 21.

XXII.

Further answering the respondents deny that when the grant was made to the Southern Pacific Railroad Company by the act of Congress of March 3, 1871, it was found that the line of route which said Company was required to adopt and did adopt, was upon the same

general line as the route of the Atlantic and Pacific Railroad Company from Springfield, Missouri, to the Pacific.

Respondents deny that there ever was any general line of route or road adopted or designated by the Atlantic and Pacific Railroad Company in the State of California or from the Colorado River to the Pacific Ocean.

Respondents deny that the route of the said Atlantic and Pacific Railroad Company from Springfield, Missouri, to the Pacific Ocean as said grant was made to the said Company by the said act of Congress of July 27, 1866, or by any act of Congress, or as said route was located or adopted by said Company, was or is upon the same general line as the route of the said Southern Pacific Railroad Company from Tehachapi Pass by the way of Los Angeles to the Colorado River at Fort Yuma, according to the terms of said grant to the said Southern Pacific Railroad Company, of March 3, 1871, or as said route was in fact adopted or located or at all; respondents further deny that the lands in suit herein were at the intersection of said two lines of route or at the place where said two routes were or are upon the same general lines and the respondents deny that the said lands or any lands mentioned herein were excluded or deducted from the later grant to the said Southern Pacific Railroad Company.

XXIII.

The respondents deny all and all manner of unlawful combination and confederacy with which they are by the

said bill charged, without this, that any other matter, cause or thing in the complainant's said bill of complaint contained, material or necessary for these repondents to make answer unto, but not herein and hereby well and specifically answered, confessed, traversed, avoided or denied, is true to the knowledge or belief of these respondents; all of which matters and things these respondents are ready and willing to aver, maintain and prove, as this Honorable Court shall direct, and pray to be hence dismissed with their reasonable costs and charges in this behalf most wrongfully sustained.

JOSEPH D. REDDING,
Solicitor and of Counsel for Respondents.

CREED HAYMOND,R.,
Of Counsel for Respondents.

Dated March 12, 1892.

[Endorsed]: No. 184. Circuit Court of the United States, Ninth Circuit, Southern District of California. United States of America, Complainant, vs. Southern Pacific Railroad Co., et al., Respondents. Answer to Amended Bill of Complaint. Due service of the within, and receipt of a copy thereof is hereby admitted this 14th day of March, 1892, Joseph H. Call, Solicitor for Complainant. Filed March 14th, 1892. Wm. M. Van Dyke, Clerk. Joseph D. Redding, Solicitor for Respondents, 33 to 37 New Chronicle Building, San Francisco, Cal.

At a stated term, to wit, the January term, A. D. 1893, of the Circuit Court of the United States of America, of the Ninth Judicial Circuit, in and for the Southern

District of California, held at the courtroom in the City of Los Angeles on Monday, the twelfth day of June, in the year of our Lord one thousand eight hundred and ninety-three. Present: The Honorable ERSKINE M. ROSS, District Judge.

THE UNITED STATES OF AMERICA,
Complainants,
vs.
THE SOUTHERN PACIFIC RAILROAD COMPANY, et al.,
Defendants.
No. 184.

Order Allowing Filing of Amended Answer.

Now comes George J. Denis, Esq., United States Attorney for the Southern District of California, and Joseph H. Call, Esq., Special Assistant U. S. Attorney for the Southern District of California, of counsel for complainants, and on behalf of complainants submit defendants' motion for leave to file an amended answer in the above entitled action to the amended bill of complainant, heretofore filed by complainants, and thereupon it is ordered that the amended answer of the defendants heretofore presented may be filed upon the condition that the replication heretofore filed to the original answer shall stand as the replication to such amended answer, and that all testimony and evidence heretofore taken shall not in any way be prejudiced, but shall be deemed to have been taken with the same force and effect as if said answer had not been amended.

I, Wm. M. Van Dyke, Clerk of the Circuit Court of the

United States, for the Southern District of California, do hereby certify the foregoing to be a full, true and correct copy of an original order made and entered by said Court, June 12th, 1893, in the cause entitled The United States of America, Complainant, vs. The Southern Pacific Railroad Company, et al., Defendants, No. 184, and now remaining of record therein.

Attest my hand and the seal of said Circuit Court this 19th day of July, A. D. 1894.

[Seal] WM. M. VAN DYKE,
Clerk.

[Endorsed]: No. 184. U. S. Circuit Court, Ninth Circuit, Southern District of California. The United States of America vs. The Southern Pacific Railroad Company, et al. Certified Copy of Order Allowing Filing of Amended Answer. Filed July 19, 1894. Wm. M. Van Dyke, Clerk.

In the Circuit Court of the United States, Ninth Circuit, Southern District of California.

No. 184.

THE UNITED STATES OF AMERICA,
Complainant,

vs.

THE SOUTHERN PACIFIC RAILROAD COMPANY and D. O. MILLS and GARRET L. LANSING, Trustees, the CITY BRICK COMPANY, ATLANTIC & PACIFIC FIBRE IMPORTING and MANUFACTURING COMPANY, LIMITED, JULIUS ABRAHAMSON, HUGO ABRAHAMSON, MRS. JESUS ORD de ANDRADE, MRS.

THOMAS ALLISON, MRS. MARY BACKMAN, MRS. MATILDA L. BARBER, HENRY A. BARCLAY, E. T. BARBER, THOMAS N. BECK, A. M. BENHAM, JESSE MARTIN BLANCHARD, E. H. BLOOD, IRA H. BRADSHAW, B. B. BRIGGS, PHILOMELA T. BURRELL, FREDERICK H. BUSBY, A. W. BUTLER, H. A. BOND, WILLIAM H. CARLSON, V. E. CARSON, B. F. CARTER, HARRY CHANDLER, FRED. CHANDLER, WALTER S. CHAFFEE, J. N. CHAPMAN, F. O. CHRISTENSEN, MRS. L. C. CHORMICLE, BYRON O. CLARK, GEORGE CLAUSSEN, T. CLEVE, NICHOLAS COCHEMS, NATHAN COLE, Jr., PETER COOK, I. D. CORY, SEATON T. CULL, STEFANO CUNEO, J. A. DAHL, ANDREW J. DARLING, THOMAS A. DELANO, RICHARD DILLON, JOHN DITTER, DAVID DOLBEEN, JOHN F. DUHREN, JAMES F. DUNSMOOR, EDWARD G. DURANT, ROBERT DUNN, HENRY ELMS, FAIRMOUNT FRUIT LAND COMPANY, GEORGE W. FENTREES, S. W. FERGUSON, WILLIAM FERGUSON, WILLIAM FREEMAN, JOSEPH W. FURNIVAL, J. GARBER, F. C. GARBUTT, J. DREW GAY, F. A, GIER, AMBROSE F. GEORGE, WILL D. GOULD, MRS. MARY L. GOULD, THOMAS E. GOULD, JAMES GRETON, W. F. GROSSER, D. J. HAINES, HERMAN HAINES, JAMES M. HAIT,

SIMEON HAMBERG, JACOB HARPE, ALICE A. HALL, CALVIN HARTWELL, WILLIAM T. HAMILTON, JAMES HAMILTON, PETER HAMILTON, JOHN C. HASKELL, JOHN C. HAY, MARY JACKSON HALL, JULIUS HEYMAN, J. M. HILL, JOHN D. HOFFMAN, AUGUST HOELLING, J. F. HOLBROOK, W. R. HUGHES, GEORGE A. HUNTER, J. F. HOUGHTON, E. J. ISMERT, W. W. JENKINS, THOMAS J. JOHANNSEN, M. D. JOHNSON, JOHN J. JONES, A. S. JOSEPH, JOHN KENEALY, FREDERICK KENWORTHY, RICHARD KICHLINE, JOSEPH KURTZ, CHARLES KUTSCHMAR, MRS. AMMORETTA J. J. LANTERMAN, THOMAS B. LAWHEAD, L. B. LAWSON, M. FETRA, STEPHEN L. LEIGHTON, JOHN ROBARTS, and G. L. MESNAGER, Executors of the Will and Testament of MIGUEL LEONIS, Deceased, GEORGE LOOMIS, MARION C. LOOP, PABLO LOPEZ, DANIEL LUCE, G. W. MACK, JOHN B. MARTIN, CORA L. MATHISSON, EZRA MAY, ANGUS S. Mc DONALD, A. M. MELROSE, Mrs. FLOSSIE MELROSE, W. E. McVAY, THOMAS MENZIES, J. G. MILLER, JOHN MILLION, Mrs. MAMIE O. MILLION, H. H. MIZE, THOMAS F. MITCHELL, W. H. MOSLEY, L. E. MOSHER, JOSEPH MULLALLY, ANDREW MYERS, D. C. NEWCOMB, ALBERT E. NETTLETON, NORTH PASADENA LAND AND WATER COMPANY, JAMES O'REILLY,

GEORGE L. OTT, PACIFIC COAST OIL COMPANY, J. H. PAINTER, M. D. PAINTER, Mrs. ANNIE PALEN, J. R. PALLETT, W. H. PALLETT, T. A. PALLETT, C. O. PARSONS, F. W. PATTEE, JAMES PEIRANO, JOHN J. PECKHAM, RAMON PEREA, DANIEL PHELAN, EDWARD E. PERLEY, McH. PIERCE, WILLIAM PISCH, R. M. POGSON, A. W. POTTS, LAFAYETTE S. PORTER, A. J. PRASTER, F. H. PRESCOTT, LEWIS H. PRICE, CHARLES RAGGIS, WILLIAM B. RALPHS, JAMES B. RANDOL, C. P. RANDOLPH, FRANCISCO REAL, GEORGE H. REED, JOHN REA, OTTO RINDERKNECHT, FELIPE RIVERA, JAMES ROBERTSON, GEORGE D. ORWAN, S. D. SAVAGE, JACOB SCHERER, GEORGE W. SEIFERT, LUCIaNO SEQUOIA, HENRY C. SHEARMAN, HENRIETTA SHIRPSER, REBECCA JETTA SHIRPSER, DAVID SHIRPSER, MAX SHIRPSER, GIANBATISTA SINACO, J. S. SLAUSON, J. WALLEN SMITH, Mrs. MAGGIE SMITH, E. SOMMER, W. A. SPENCER, H. G. STEVENSON, H. J. STEVENSON, M. W. STIMSON, ROBERT STRATHEARN, R. P. STRATHEARN, ELEANOR SUSSMAN, D. M. SUTHERLAND, JOHN SWEENY, W. H. TAGGART, JAMES P. TAYLOR, MARY O. TONGIER, JAMES R. TOWNSEND, Mrs. C. L. TRUE, L. TUNISON, J. S. TURNER, GEORGE S. UMPLEBY, F. VEYSETT, GEORGE VILAS, ALDEN R. VINING, DANIEL A. WANGER, S. A. WALDRON, W. W. WAL-

LACE, C. H. WATTS, Mrs. JULIA J. WHEELER, A. C. WHITACRE, M. L. WICKS, MOYE WICKS, Mrs. JENNIE WICKS, MARY C. WILLIAMS, C. N. WILSON, R. N. C. WILSON. J. YOUNGBLOOD and J. A. GRAVES,

Defendants.

Supplemental and Amended Answer to Amended Complaint.

Now come the respondents in the above-entitled cause and for answer to the amended bill in equity, filed herein on the 26th day of September, 1891, against them, purporting to be a bill brought by the United States, by the Attorney General thereof, and signed by Joseph H. Call, as Special Assistant U. S. Attorney, and counsel for complainant, and to so much and such parts of said bill as they are advised it is material for them to make answer unto, answering, say:

I.

That said respondents aver that the Southern Pacific Railroad Company, respondent herein, is a corporation, organized and existing under and by virtue of the laws of the State of California, as hereinafter stated, and a citizen of said last-mentioned State.

And the said respondents admit that the lands described in said bill were acquired by the United States of America from Mexico, in or about the year 1846, and the title to said lands was confirmed to the United States by the treaty of Guadalupe Hidalgo in the year 1848. The said respondents deny that such lands or any thereof ever since such acquisition or confirmation of title thereof

have been, or at the time of, or at any time since, the filing of the bill of complaint in this suit, were or have been, or that they or any of them are now, owned by the United States by title in fee simple or otherwise; they deny that complainant during said times or at the time of or at any time since the filing of the bill of complaint in this suit was or has been, or that it now is, in possession of said lands or any of them, and allege on the contrary that the said lands described in the said bill, long before the filing of said bill were granted by the complainant to the respondent, the Southern Pacific Railroad Company, and thereafter were and have been, for the most part if not entirely, in its possession, or the possession of its grantees, so far as any person or party was in actual possession thereof.

II.

The said respondents admit that by an act of Congress approved July 27, 1866, entitled "An act granting lands to aid in the construction of a railroad and telegraph line from the States of Missouri and Arkansas to the Pacific Coast", Congress incorporated the Atlantic and Pacific Railroad Company and granted to said Company to aid in the construction of a railroad and telegraph line in said act described, a large quantity of public lands, but it avers that such grant was made on and subject to the conditions and the limitations in said act mentioned, to which said act of Congress reference is hereby made, U. S. Stats., vol. XIV, p. 292. The said respondents admit that sections 3 and 18 of said act of Congress are correctly set forth and recited in said bill; but by reason of

the insufficiency of said recitals, this defendant refers to the whole of said act of Congress.

The said respondents are uninformed as to whether the said Atlantic and Pacific Railroad Company only accepted said grant, and therefore controvert the allegation on that behalf, in the bill herein contained; they admit upon information and belief that the Atlantic and Pacific Railroad Company began to construct a railroad in the State of Missouri, but they deny that it ever proceeded to or did construct any portion of any railroad in the State of California.

And the said respondents deny that said Atlantic and Pacific Railroad Company did locate on the ground or designate upon a plat or map the whole of said line of railroad, under or in accordance with said act, from Springfield, Missouri, by way of the points or places named in said act, or in the time or manner provided in said act or otherwise, to the Pacific Ocean, and deny that it ever lawfully located, or adopted or designated any part of said line in the State of California; and deny that on or about the —— day of ————, 1866, or at any other time, said Company did file any such plat in the office of the commissioner of the general land office, and deny that at that or any such time, any such designation or location of said line of railroad was approved by the Secretary of the Interior, and deny that the odd sections of public lands on each side of said road for thirty miles were withdrawn from market or reserved, and deny that the lands in suit herein or any of them fell within the twenty-mile limits of any such line or were ever lawfully withdrawn from market or reserved for or for the

benefit of said Atlantic and Pacific Railroad Company; and deny that the Atlantic and Pacific Railroad Company ever designated a line or railroad between the Colorado River and the Pacific Ocean by a map thereof filed in the office of the commissioner of the general land office, or made or filed a map of definite location of a route from the Colorado River to the Pacific Ocean, whether by the most practicable and eligible route or otherwise howsoever.

The said respondents aver that the said Atlantic and Pacific Railroad Company never made any actual or definite location of its railroad in California, nor constructed any part of a railroad in said State, under or according to the act of Congress approved July 27th, 1866, or any amendments, modifications or supplements thereto, or otherwise howsoever.

The pretended location of a route by said Atlantic and Pacific Railroad Company in California never was or became an actual or a definite location or anything else than an attempted or pretended designation of a general route for a railroad from —— Francisco to the Needles, and such pretended location or designation of a route was a colorable and fraudulent location or designation of an unauthorized and an impracticable line. The Secretary of the Interior never undertook to accept such pretended location or designation as anything else than a designation of a general route, and no right to or interest in any public lands was or could be acquired by said railroad company by reason of any such attempted location or designation or any act of accept-

ance thereof; and the decision of a Secretary of the Interior holding that such a general route was authorized by the act of Congress, approved July 27, 1866, was in contravention of a previous decision of a prior Secretary of the Interior to the contrary effect, and subsequently thereto and prior to the institution of this suit was reversed by the decision of a subsequent Secretary of the Interior, holding that the said Atlantic and Pacific Railroad Company was not entitled to construct or locate a line to San Francisco, which last-mentioned decision still remains in full force and effect, so far as the Interior Department is concerned and as these defendants are advised and believe, and therefore aver, the decision of a Secretary of the Interior undertaking to accept from the Atlantic and Pacific Railroad Company a designation of a route for a railroad upon the route referred to, was unauthorized and void, and in violation of the rights acquired by and vested in the Southern Pacific Railroad Company.

These respondents ask leave to refer to said decisions, and to file copies thereof herein, if deemed necessary.

Respondents admit and aver that the greater part, but not all the lands in suit herein are situated within twenty miles of the pretended line of general route of said Atlantic and Pacific Railroad from San Francisco to the Needles, and the greater part, but not all thereof are situated within twenty miles of the Southern Pacific Railroad and that all thereof are within thirty miles of said Southern Pacific Railroad.

The said respondents deny that the said Atlantic and Pacific Railroad Company was authorized by said act or any other act of Congress to locate or construct a line of railroad from the crossing of the Colorado River to San Francisco; they are advised and believe and therefore aver that under said act of Congress the respondent, the Southern Pacific Railroad Company, alone was authorized to construct a line of railroad from the crossing of the Colorado River to San Francisco, and to acquire lands under said act of Congress along and opposite said line, and that the only right which the Atlantic and Pacific Railroad Company ever acquired to construct any line of railroad in the State of California was the right to construct a road from the crossing of the Colorado River by the most practicable and eligible route to the Pacific Ocean, which route was not on the line pretended to be designated by the said Atlantic and Pacific Railroad Company, but to the southerly thereof, and through the San Gorgonio Pass to the Pacific in the vicinity of San Pedro.

III.

The said respondents admit that by section 23 of an act of Congress approved March 3, 1871, (U. S. Stats., vol. 16, p. 573) entitled "An act to incorporate the Texas and Pacific Railroad Company and to aid in the construction of its road and for other purposes," it was provided as follows:

"Sec. 23. That, for the purpose of connecting the Texas Pacific Railroad with the city of San Francisco the Southern Pacific Railroad Company of California is

hereby authorized (subject to the laws of California) to construct a line of railroad from a point at or near Tehachapi Pass, by way of Los Angeles, to the Texas Pacific Railroad, at or near the Colorado River, with the same rights, grants and privileges, and subject to the same limitations, restrictions and conditions as were granted to said Southern Pacific Railroad Company of California, by the act of July twenty-seven, eighteen hundred and sixty-six; provided, however, that this section shall in no way affect or impair the rights, present or prospective, of the Atlantic and Pacific Railroad Company, or any other railroad company."

IV.

The said respondents admit that by the act of Congress, approved July 6, 1866, entitled "An act to forfeit the lands granted to the Atlantic and Pacific Railroad Company, to aid in the construction of a railroad and telegraph line from the States of Missouri and Arkansas to the Pacific Coast, and to restore the same to settlement and for other purposes," all the lands and rights to lands in California theretofore granted or conferred upon said Atlantic and Pacific Railroad Company were declared forfeited and restored to the public domain. They pray leave to refer to said act, but they deny that the same in any wise operated to forfeit or resume or restore to the public domain any lands as against these respondents. They admit and aver that no part of said Atlantic and Pacific Railroad had at the time of the passage of said act of 1886, or has at any time since, been constructed in the State of California.

V.

The said respondents admit that they claim ownership in themselves and their grantees of the lands described in the bill of complaint and they admit that they claim the same, and aver that they acquired and became entitled to said lands, under and by virtue of the said act of Congress of March 3, A. D. 1871, and the grant to the Southern Pacific Railroad Company therein contained, and they admit that they claim, and they aver the fact to be, that the said Southern Pacific Railroad Company duly accepted the said grant and the terms and conditions thereof and duly designated and located the route and line of its road between the points in that behalf mentioned in said act and within the time and manner in said act provided on that behalf, such designation and location being made by map or plat thereof, which it filed in the office of the commissioner of the general land office on the 3d day of April, 1871, and they pray leave to refer to said map or plat when the same shall be produced in this suit. They aver that such map or plat was duly accepted by the Secretary of the Interior as designating the line of its road between the points mentioned in said act and in accordance with said act of Congress and for twenty years and over the Interior Department held and conclusively adjudged that the grant to said Southern Pacific Railroad Company under said act became effective and attached to the lands granted thereby and involved in this suit, on the 3d day of April, 1871, and during all that period the transactions between the complainant

and the said Southern Pacific Railroad Company were based upon that claim by the railroad company and its acceptance and adoption by the complainant; and the transactions between said Railroad Company and the other defendants in respect to lands involved in this suit, were and have been based upon such action, determination and rulings of the Interior Department of the United States. And they aver that afterwards maps and plats were filed in the office of the commissioner of the general land office of its line of railroad as built from a point at or near Tehachapi Pass by way of Los Angeles to the Colorado River under and in pursuance of the provisions of said act of March 3, 1871, such last mentioned maps and plats having been so filed on the following dates, viz:

Section 1, May 7, 1874.

Section 2, November 13, 1875.

Section 3, July 19, 1876.

Section 4, February 28, 1877.

Section 5, December 28, 1877.

They deny that the located or designated line of route of the said Southern Pacific Railroad Company, as aforesaid, lies upon the same line as the attempted or pretended line of route, or as any lawfully designated or located line of route, of the Atlantic and Pacific Railroad Company, and deny that the lands in suit herein would be or are at any place where the designated and located line of the Southern Pacific Railroad Company aforesaid, and any lawfully designated or located line of the Atlantic and Pacific Railroad Company would be

or are upon the same general line or would have intersected or intersect each other. They deny that if the Southern Pacific Railroad Company had (as it did) designated its line of route from Tehachapi Pass by way of Los Angeles to a point at or near the Colorado River as claimed by these respondents or between such terminal points at all, that such route would have been upon the same general line as the pretended route of the Atlantic and Pacific Railroad Company as alleged in said bill to have been located by it or any line or route which could have been lawfully designated or located by said Atlantic and Pacific Railroad Company under the act of Congres of July 2, 1866, above referred to or otherwise.

They deny that any line or route of the Atlantic and Pacific Railroad Company has ever been lawfully located or designated in the State of California or any limits of the grant for such company ever lawfully fixed or in any wise defined or ascertained and deny that the lands in suit fell or fall within any limits of any grant to the Atlantic and Pacific Railroad Company. They deny the allegation in said bill contained that none of said lands were covered by the grant to the Southern Pacific Railroad Company and that none of said lands were of the category of lands which were to be granted to said company, and each of them, and aver the contrary thereof.

And these respondents further show that upon the filing by said Southern Pacific Railroad Company of the map or plat of its line on said 3d day of April, 1871, as

hereinbefore stated, the Secretary of the Interior under date of April 3, 1871, directed the commissioner of the general land office to withdraw the granted lands along the route of said railroad as designated on said map from pre-emption, private entry and sale, and the commissioner of the general land office under date of April 21st, 1871, issued instructions to the Registers and Receivers of the proper United States district land offices in California to withdraw from sale or location, pre-emption or homestead entry all the odd-numbered section of public lands within thirty miles of the said line of said railroad, and these respondents aver that all the lands mentioned in the bill of complaint in this suit which were public lands at the date of such orders for withdrawal, were thereupon withdrawn according to the said instructions. Certified copies of said orders of withdrawal are hereto annexed and made part of this answer, marked Exhibit "A," a certified copy of the official diagram defining and marking the twenty and thirty-mile limits opposite said railroad is herewith filed and made part of this answer marked Exhibit ——.

These respondents aver that the line of route of the Southern Pacific Railroad through said lands had been duly located, and the lands granted to it by said 23rd section of the said act of March 3, 1871, had been duly withdrawn from market for the benefit of the respondent, the Southern Pacific Railroad Company before the said Atlantic and Pacific Railroad Company attempted or pretended to designate or locate its general route or

line for its road through or opposite to the said lands, or any part of such general route.

And these respondents aver that the respondent herein, the Southern Pacific Railroad Company, under and in fulfilment of the provisions of the said acts of Congress hereinbefore cited, duly located, constructed and completed its said railroad from a point near Tehachapi Pass, by way of Los Angeles, to the Colorado River, and commissioners appointed by the President of the United States duly reported the fact of such completion, and said railroad was from time to time duly approved and accepted by the President of the United States, and maps thereof duly filed in the general land office as above stated.

And these respondents ask leave to refer to and exhibit herein, certified transcripts from the Department of the Interior at Washington to show such maps and the action of said commissioners and of the President of the United States and the Interior Department in this matter.

VI.

These respondents allege that the line of route for the said railroad from Tehachapi Pass, by way of Los Angeles, to a point at or near the Colorado River and for all the route between the terminal points named in said act of Congress, has been located and constructed by the Southern Pacific Railroad Company in accordance with the said act of Congress, and they deny that said line of route is upon the same general line as the pretended route of the Atlantic and Pacific Railroad in

California, and the said respondents claim and aver that the lands described in the said bill of complaint were and are of the category of lands granted to the said Southern Pacific Railroad Company and were, and are, sections and parts of sections of odd numbers, and within the limits of said grant.

VII.

These respondents admit that the greater part but not all of the lands in suit herein are situated within twenty miles of the pretended general or preliminary route of the said Atlantic and Pacific Railroad from San Francisco to the Needles, but they deny that they are situated within twenty miles or any other distance, of any lawfully designated or located route or line of route of said railroad company or within any lawful limits of any grant to said company. They admit that as to the actual mineral character of said lands they were in the same condition in respect to minerals in the whole of the year A. D. 1866, that they were and have been all the time from that year down to and including the 3d day of April, 1871, but they are uninformed as to whether there were changes during such period in the knowledge or understanding or general knowledge or understanding as to the mineral character thereof.

VIII.

Replying to paragraph eight of the bill of complaint these respondents deny the allegations of said paragraph and each of such allegations and aver that their claim to the lands in suit herein is legal and valid and

founded upon express grant thereof to the said Southern Pacific Railroad Company for and upon a full and executed consideration from the complainant and as to some of said lands they ask leave to refer to and show a patent or patents thereof to said Southern Pacific Railroad Company from the Government of the United States legally issued and duly authenticated.

And these defendants further say, that so far as the right of way of the Southern Pacific Railroad Company one hundred feet in width on each side of its railroad from a point at or near Tehachapi Pass by way of Los Angeles to the Colorado River and its grounds for station buildings, workshops, depots, machine-shops, switches, sidetracks, turn tables and water stations are concerned, it claims and is entitled to the same under and by virtue of the provisions of section 23 of the act of March 3, 1871, hereinabove referred to, which conferred upon the Southern Pacific Railroad Company of California all the rights, grants and privileges granted to said Southern Pacific Railroad Company of California, by the act of July 27th, 1866, including those specifically mentioned and referred to in Section 2 of said last mentioned act; and it avers that at the time the pretended line of the Atlantic and Pacific Railroad Company from San Francisco to the Needles is pretended to have been designated by a plat thereof filed in the office of the commissioner of the general land office, the United States did not have full title, not reserved, sold, granted or otherwise appropriated and free from pre-emption or other claims or rights, to the said right of way one

hundred feet in width on each side of said railroad of said Southern Pacific Railroad Company, or such grounds for station buildings, workshops, depots, machine-shops, swithches, sidetracks, turntables and water stations, but such right of way and lands had been reserved, granted and appropriated to and for the Southern Pacific Railroad Company and were subject to its claim and rights for the purposes above stated, and no right or claim of the Atlantic and Pacific Railroad Company present or prospective thereto or in respect thereof ever did attach or could have attached thereto or to any part thereof.

IX.

These respondents admit that they claim, and they aver the fact to be, that a line of railroad and telegraph from Tehachapi Pass by way of Los Angeles to the Colorado River has been constructed by the Southern Pacific Railroad Company within the time, and in the manner provided by said act of Congress of March 3, 1871, herein referred to, and that commissioners appointed by the President of the United States have reported that such railroad was constructed in all respects in compliance with said act and these respondents ask leave to refer to the reports of the Commissioners now on file in the Department of the Interior in Washington City and to produce and file herein certified copies of said reports. They deny that any such claims are pretences, or are unfounded and aver that the Southern Pacific Railroad Company named in said act of Congress of March 3, 1817, did construct the said rail-

road and telegraph line between said terminal points within the time and in the manner provided by said act of Congress and deny the averments to the contrary thereof in said bill contained.

X.

These respondents admit that on or about the 2d day of December, 1865, a corporation was organized under the laws of the State of California under the corporate name and style of the Southern Pacific Railroad Company, and under a general law of said State, approved May 20, 1861, entitled "An act to provide for the incorporation of railroad companies and the management of the affairs thereof and other matters relating thereto." It admits that said act is printed in the Statutes of California, 1861, at page 607 and prays to refer thereto.

XI.

These respondents admit that the said corporation, "The Southern Pacific Railroad Company" was formed for the purpose and with the corporate powers, as stated in the articles of incorporation, of constructing, owning and maintaining a railroad from some point on the Bay of San Francsico, in the State of California, and to pass through the counties of Santa Clara, Monterey, San Luis Obispo, Tulare, Los Angeles and San Diego to the Town of San Diego in said State; thence eastward through said county of San Diego to the eastern line of the State of California there to connect with the contemplated railroad to the Mississippi River; and they refer to said articles of incorporation for the precise contents, purport and effect thereof.

XII.

These respondents aver that on or about the 11th day of October, A. D. 1870, under and by virtue of the general laws of the State of California on that behalf, the said Southern Pacific Railroad Company, the San Francisco and San Jose Railroad Company, the Santa Clara and the Pajaro Valley Railroad Company, corporations organized and existing under the laws of California, entered into real, but they deny that they entered into pretended, articles of consolidation and amalgamation, consolidating and amalgamating their capital stocks, debts, property, assets and franchises under the name of the Southern Pacific Railroad Company, in the manner provided by the laws of California. They admit and aver that such articles were signed, published and filed as provided by the laws of California.

They pray leave to refer to such articles of consolidation and amalgamation, if material to any purposes of this suit, and to the laws of California, authorizing the same, and to the laws of California affecting the corporations aforesaid or any of them and to the amendatory articles of the Southern Pacific Railroad Company filed ——. They deny that by any such articles or agreement of consolidation and amalgamation or by any consolidation or amalgamation a different capital was made, any substantially new stock issued, or a new different corporation created, but on the contrary, they aver that the corporation thereafter existing was a consolidation and amalgamation of the theretofore existing corporations and not a newly created corporation. They pray leave to

refer to the articles of incorporation of the consolidating companies if any wise material to this suit. They allege that said consolidation and amalgamation of said corporations were authorized by the laws of California and by the laws of the United States so far as applicable, and were, and are, legal and valid, and deny all allegations in said bill to the contrary thereof; they deny that such consolidation and amalgamation was unauthorized by the laws of the State of California or without the consent of said State, or was unauthorized by the laws of the United States, or without authority from the United States, or was or is illegal or void.

XIII.

These respondents aver that on or about the 12th day of August, 1873, under and by virtue of the laws of the State of California on that behalf, the said Southern Pacific Railroad Company as it existed after the said consolidation and amalgamation of 1870, and composed of the consolidated and amalgamated companies above referred to and the Southern Pacific Branch Railroad Company, a corporation, organized and then existing under the laws of California, formed for the purpose and with the corporate powers stated in its articles of incorporation of constructing, owning and maintaining a railroad within the State of California, did consolidate and amalgamate their capital stock, debts, property, assets and franchises under the name and style of the Southern Pacific Railroad Company and entered into articles of consolidation and amalgamation of which Exhibit "A" attached to the plaintiff's bill is a copy, and that said ar-

ticles were duly signed, published and filed as required by the laws of California. They pray leave to refer to such articles so far as material to this suit, and to the laws of California authorizing the same. They aver that such consolidation and amalgamation and such articles of consolidation and amalgamation were real and not pretended and deny that by such articles of agreement of consolidation and amalgamation, or by any consolidation and amalgamation, a new capital stock or a new or different corporation was created, or purported to be created but they aver that the corporation thereafter existing was a consolidation and amalgamation of the theretofore existing corporations and not a newly created corporation.

As to the contents, purport and effect of the articles of incorporation of the consolidating companies they pray leave to refer to the same if in any wise material to this suit; and they pray leave to refer to the laws of the State of California as existing in and prior to 1873, authorizing the consolidation and amalgamation of railroad companies incorporated under the laws of that State.

These respondents deny that such articles of consolidation and amalgamation were illegal or void or unauthorized or prohibited by the laws of the State of California, were unauthorized or prohibited by the laws of the United States or were entered into without authority from the Congress of the United States, or without other competent authority, but on the contrary they aver that the consolidation and amalgation of said railroad companies was made in conformity with the laws of the State of California whose action in that behalf was fully authorized and

recognized by the Congress of the United States, and that such consolidation and amalgamation was and is in all respects valid.

These respondents deny that by entering into said articles of consolidation and amalgamation the said Southern Pacific Railroad Company named in the act of Congress, of March 3, 1871, forfeited, abandoned or releasen to the United States all or any part of the lands granted to it by said act of Congress or all or any rights, grants, franchises or privileges conferred by said act, or all or any right to earn or acquire any and all lands under said act.

XIV.

These respondents admit that the Southern Pacific Railroad Company which is defendant herein claim to have, and they aver that it has, patents issued by the United States to it in due form of law, purporting to convey and conveying to said company a portion of the lands in suit herein. It avers that said patents were real and not pretended and were duly recorded in the general land office before they were delivered to said company, and still remain so of record, and since the delivery thereof, the same have been recorded in the county of Los Angeles, —— in the State of California.

These respondents deny that the lands thus patented are unknown to the complainant, and deny that the patents therefor were issued illegally, or without authority of law or are illegal or void. On the contrary, these respondents allege that said patents are in all respects legal and valid, and they ask leave here to refer to the

same, and to present and file as evidence in this suit, duly certified copies thereof, if deemed necessary.

XV.

Replying to paragraph XV of the complainant's bill these respondents admit that the defendants and respondents other than the Southern Pacific Railroad Company claim to be and they and each of them aver that they are in each and every instance, bona fide purchasers for value received, without notice, from the Southern Pacific Railroad Company, a corporation named in said act of Congress of March 3, 1871, and they further aver that the time of purchase in each instance by said respondents and defendants and each of them from the said Southern Pacific Railroad Company is set forth in Exhibit "B" hereto attached and made part of this answer, and also copies of the deeds and parties to the deeds and contracts of sale and the contents thereof are hereto attached and marked Exhibits "G" and "H" and made a part of this answer. That in said Exhibit "B" is also given the date and day of each purchase made by said defendants and respondents and each of them. That at the time the respondents other than the Southern Pacific Railroad Company purchased said lands as are set forth in said Exhibit "B" said Southern Pacific Railroad Company the vendor, at that time, was the owner and seised in fee of said lands and said respondents entered into the possession of the said lands all of which are involved in this suit under said purchase and the consideration in each instance paid by the said respondents to the said Southern Pacific Railroad Company, which appears in each instance opposite

the name of each respondent in said Exhibit "B," was a bona fide one and was paid truly and in a bona fide manner and without notice at the time of said payment or at any time prior thereto in each instance. And said respondents other than the Southern Pacific Railroad Company aver that they have no knowledge as to which, if any, of the co-respondents and co-defendants herein claim any right in the lands in suit, or any part or parcel thereof, under or by virtue of an act of Congress approved March 3, 1887 (24 Stat. 556) referred to in the bill of complaint.

XVI.

These respondents admit that the respondents, D. O. Mills and Garrit L. Lansing, have a mortgage or deed of trust from the Southern Pacific Railroad Company for the above described lands to secure the payment of certain indebtedness of said defendant railroad company, and that said mortgage is dated April 1, 1875, and is executed in due form of law, and is recorded in Los Angeles and San Bernardino and Ventura Counties, California, where the same has been of record since 1875, but they deny that complainant has any title to said lands or any part thereof which can be clouded or injuriously or otherwise affected thereby.

XVII.

They admit that the lands described in said bill are to a considerable extent naturally timbered or wooded lands and valuable for the timber and wood thereon.

While admitting that they claim but denying that they pretend to own an interest in said lands these defendants deny that they or their grantees have ever

unlawfully entered on said lands or unlawfully chopped down any timber or trees thereon and deny that said lands, timber or trees or any thereof were at any time since the taking effect of the grant to the defendant, the Southern Pacific Railroad Company above referred to, the property of the complainant in this suit. They admit and aver that the Southern Pacific Railroad Company and its grantees have at various and diverse times carried away timber and trees from said lands and applied the same to their own use and are now removing from said land wood cut thereon and are intending to and unless enjoined therefrom will chop down other trees on said land, but they deny that any such acts were, are or will be in anywise unlawful or have resulted or will or could result in any injury to the complainant.

XVIII.

They admit that the amount in controversy in this suit exceeds the sum or value of five thousand dollars exclusive of interest and costs.

XIX.

They admit and aver that the defendant, the Southern Pacific Railroad Company, while claiming (but not pretending) to own an interest in said lands, has at various and diverse times during the past ten years by actual (but not pretended) contract and conveyances sold and conveyed (but not pretended to sell or convey) large portions of said lands to other of the defendants herein, and by itself and its grantees has realized from wood and tim-

ber on said lands considerable sums of money which it and they have appropriated to its and their own use.

XX.

The respondent, the Southern Pacific Railroad Company further answering states that the schedule hereto annexed, marked Exhibit "B" and made part of this answer, is a correct schedule of all such lands claimed in this suit as the said respondent has sold prior to the filing of the bill of complaint herein, together with the names of the parties who were the purchasers, and the amounts of money received by the said respondent, upon the contract of sale to each purchaser respectively, and it avers that at that time of such sales and each of them the said defendant railroad company was the owner of the lands so sold, and that it is now the owner of all such lands which have not been so sold by it.

XXI.

And all of the respondents herein, other than the Southern Pacific Railroad Company, D. O. Mills and Garrit L. Lansing, admit and allege that they and each of them claim to be bona fide purchasers for value, from the said Southern Pacific Railroad Company and its grantees, also purchasers in good faith, but not otherwise, of all of the lands hereinbefore specifically described and set forth in Schedule "B" as having been sold by the respondent the Southern Pacific Railroad Company, and that they purchased the same in good faith and for a valuable consideration, believing and still believing that at the time of their said purchase of said lands they were owned by absolute

title in fee simple by said Southern Pacific Railroad Company and its said grantees.

That attached hereto and made a part of this answer are several exhibits which respondents ask may be taken as a part of the answer and referring thereto and to each and every allegation to which said exhibits are pertinent, namely:

Exhibit "A," being certified copy of a letter from Willis Drummond, commissioner of the general land office, dated April 21, 1871, to the Register and Receiver, Los Angeles, California, order of withdrawal of lands within the limits of the Southern Pacific Company's Branch Line.

Exhibit "B" referred to on page 22 of the answer being a statement under date of July 3, 1890, of the condition of the books of the Land Department of the Southern Pacific Railroad Company of lands involved in said suit, tabulated under the following headings: "Contract No. -- Contract dated. Purchaser. Address. Fraction. Sec. Twp. Rge. Acres, Amount sold for. Surveyed or unsurveyed. A. & P. R. R. Co. Limits. S. P. R. R. Limits. Main Branch Line Selected or not selected by S. P. R. R. Co. No. and date of selection list. Cost of surveying, selecting and conveying, which is divided into three columns as follows: Surveying fees, selecting Reg. and Rec. fees, costs of conveying. Remarks."

Exhibit "C." Certified copy of List No. 21 of lands selected by the Southern Pacific Railroad Company within the granted limits of the grant made by the 23d section of the act of Congress approved March 3, 1871, an account of the line known as the branch line of said South-

ern Pacific Railroad Company, which lands are situate in the Los Angeles, California Land District.

Exhibit "D." Certified copy of list numbered 25 of lands selected by the Southern Pacific Railroad Company within the indemnity limits grant made by the 23d section of the act of Congress approved March 3, 1871, on account of the line known as the Branch line of said Southern Pacific Railroad Company, which lands are situate in the Los Angeles, California Land District; together with the designation of losses stated as a basis for such selections; also supplemental list of losses.

Exhibit "C-2." Certified copy of a letter to the commissioner of the general land office, January 19th, 1889, by Henry Beard, Attorney for the Southern Pacific Railroad Company of California; also copy of certificate of deposit No. 1431 of the National Bank of the Republic, Washington, D. C. dated January 19th, 1889, by said Railroad Company of $12.50 on account of conveying the lands located at the Los Angeles, California Land Office, at Los Angeles, California, List No. 21.

XXII.

Further answering the respondents deny that when the grant was made to the Southern Pacific Railroad Company by the act of Congress of March 3, 1871, it was found that the line of route which said company was repuired to adopt, was upon the same general line as the route of the Atlantic and Pacific Railroad Company from Springfield, Missouri, to the Pacific.

Respondents deny that there ever was any general line of route of road adopted or designated by the At-

lantic and Pacific Railroad Company in the State of California or from the Colorado River to the Pacific Ocean.

Respondents deny that the route of the said Atlantic and Pacific Railroad Company from Springfield, Missouri, to the Pacific Ocean as said grant was made to the said Company by the said act of Congress of July 27, 1866, or by any act of Congress, or as said route may have been in any wise located or adopted by said Company (if it ever was so located or adopted) was, or is upon the same general line as the route of the said Southern Pacific Railroad Company from Tehachapi Pass by the way of Los Angeles to the Colorado River at Fort Yuma, according to the terms of said grant to the said Southern Pacific Railroad Company, of March 3, 1871, or as said route was in fact adopted or located or at all; respondents further deny that the lands in suit herein were at the intersection of any such two lines of route or at the place where any such two routes were or are upon the same general lines and the respondents deny that the said lands or any lands mentioned herein were excluded or deducted from the grant to the said Southern Pacific Railroad Company, under said act of March 3, 1871.

XXIII

And these defendants further answering, say that the Southern Pacific Railroad Company, to which the grant of lands was made by the act of Congress of March 3, 1871, still exists under the laws of the State of California under which the same was created, and has at

no time caused to exist or surrendered or lost the rights conferred by said act and is the same corporation which is made party defendant to this bill, and that any and all amalgamations or consolidations therewith of other railroad corporations organized under the laws of the State of California have been made in pursuance of and subject to the terms and provisions of the laws of the State of California, and by due and legal authority, and that the United States by constant and continued action of all branches of the Government has recognized the continued existence of the Southern Pacific Railroad Company as the grantee of lands under the act aforesaid, and has always claimed and exercised, and still claims and exercises, against the Southern Pacific Railroad Company, nothwithstanding the amalgamations from time to time of various other railroad corporations of the State of California with the Southern Pacific Railroad Company originally constituted under the laws of said State, all the rights conferred upon the United States, and has demanded and enjoyed the benefit and still demands and enjoys the benefit, of the performance of all the duties imposed upon the Southern Pacific Railroad Company under or by virtue of the said act of Congress and each thereof and has claimed and exercised and still claims and exercises the rights and has demanded and enjoyed the benefit of and still demands and enjoys the benefit of the performance of the duties prescribed in said act of Congress in respect of the line constructed by the Southern Pacific Railroad Company from a point at or near Tehachapi Pass by way of Los

Angeles to the Colorado River, and is estopped in law and equity from asserting any claim that the Southern Pacific Railroad Company as now existing was not the same corporation named and designated in said act or that the said railroad was not constructed by the grantee named therein, and that it could not in any event be adjudged in favor of the United States in this suit or otherwise that the said railroad was not constructed by the grantee named in said act or that the Southern Pacific Railroad Company as now existing is not entitled to the benefits of the grants named therein without the surrender and abandonment by the United States of its claim to the exercise by it of the rights and privileges heretofore claimed and exercised by it of the benefit of the performance of the public duties heretofore claimed and enjoyed by it in respect of the Southern Pacific Railroad Company as from time to time existing and in respect of the said road under and by virtue of the act of Congress above referred to.

XXIV.

And these defendants further answering say, that the United States cannot now restore these defendants to the same position in respect to the land grant to the Southern Pacific Railroad Company under said act of March 3, 1871, and its rights and claims to indemnity for lost lands which it would have had if the United States had not accepted its selections of lands in controversy in this suit and issued patents to the said defendant for such of said lands as have been patented to it, inasmuch as since the date of said patents the

United States has permitted other parties to acquire claims to and has granted other parties patents for valuable lands within the indemnity limits of its road under said act of March 3, 1871, which would prevent this company from making now as favorable indemnity selections as it might then have made, and because the acceptance of such selections and issue of such patents has delayed the exercise by said company of the right of selection of indemnity lands which this company would have been entitled to, and has deprived it of the use and benefit of the lands which might have been derived thereunder at times when sales thereof might have been made upon terms to the defendant far more favorable than any upon which like lands could now be sold.

XXV.

And these defendants further answering say, that heretofore and on or about the first day of April, 1875, the Southern Pacific Railroad Company executed to the defendant, D. O. Mills and one Lloyd Tevis, a mortgage bearing date on that day to secure a proposed issue of negotiable mortgage bonds of said Southern Pacific Railroad Company therein referred to, a copy of which mortgage is filed herewith and marked Exhibit "E," and prayed to be taken as a part of this answer. That negotiable mortgage bonds to very large amounts were from time to time between said 1st day of April, 1875, and September 25, *1871* duly issued thereunder and sold to and purchased by the public in good faith and for full and valuable consideration and that of such bonds there are now outstanding in the hands of bona fide

holders thereof for value bonds to the amount at their par value of upwards of thirty-one million dollars. That Garrit L. Lansing, named as defendant in this suit, has been duly substituted as mortgage trustee thereunder in place and stead of said Lloyd Tevis named as a trustee in said original mortgage.

XXVI.

And these defendants further answering say, that heretofore and on or about the 25th day of August, 1888, and before the institution of this suit, the said Southern Pacific Railroad Company executed to the Central Trust Company of New York, a corporation created, organized and existing under and by virtue of the laws of the State of New York and having its principal place of business in the city and county of New York, a further mortgage or deed of trust bearing date on said 25th day of August, 1888, to secure a proposed issue of negotiable Mortgage bonds of said Southern Pacific Railroad Company therein referred to, a copy of which mortgage is filed herewith and marked Exhibit "F," and prayed to be taken as a part of this answer. That negotiable mortgage bonds to large amounts were from time to time subsequent to said 25th day of August, 1888, and prior to the commencement of this suit duly issued thereunder and sold to and purchased by the public in good faith, and for full and valuable consideration, and that of such bonds so issued prior to the institution of this suit bonds to the amount of six million, nine hundred and eight-one thousand dollars are now outstanding in the hands of bona fide holders thereof for value, and

that the said Central Trust Company of New York is a necessary party to this suit; and these defendants pray the like effect for the foregoing allegations as if the nonjoinder of such Central Trust Company of New York as a party to this suit were specifically pleaded herein.

XXVII.

And these defendants further answering say, that being required so to do by the United States, the said Southern Pacific Railroad Company has from time to time paid the following fees and charges to the United States upon and in respect of the lands in controversy in this suit, that it to say:

The sum of six thousand one hundred and thirty-five and 34-100ths ($6,135.34) dollars as and for surveying and registers and receivers and surveying fees required by the United States in respect of said lands, and that the United States could not in any event or under any circumstances be entitled to recover, maintain or assert any claim to the said lands or cancel or have canceled the patents theretofore issued to said company in respect thereof until it should have repaid to said railroad company the amounts above mentioned with interest and in all other respects restored the company to the like position in all respects which it occupied at the time when such selections of said lands by the company were accepted and approved and at the time when the patent therefor was issued to it as aforesaid by the United States.

XXVIII.

The respondents deny all and all manner of unlawful combination and confederacy with which they are by the said bill charged, without this, that any other matter, cause or thing in the complainant's said bill of complaint contained, material or necessary for these respondents to make answer unto, but not herein and hereby well and specifically answered, confessed, traversed, avoided or denied, is true to the knowledge or belief of these respondents, all of which matters and things these respondents are ready and willing to aver, maintain and prove as this Honorable Court shall direct, and pray to be hence dismissed with their reasonable costs and charges in this behalf most wrongfully sustained.

JOSEPH D. REDDING,
Solicitor and of Counsel for Respondents.

HARVEY S. BROWN, R.,
Of Counsel for Respondents.

[Endorsed]: No. 184. Circuit Court of the United States, Ninth Circuit, Southern District of California. United States of America, Complainants, vs. S. P. R. R. Co., and Others, Respondents. Amended Answer. Received copy hereof (except exhibits,) May 31, '93. Joseph H. Call, Spl. Asst. U. S. Atty. Received May 31st, 1893, Wm. M. Van Dyke, Clerk. Filed June 12, 1893. Wm. M. Van Dyke, Clerk. Joseph D. Redding, Solicitor for Respondents. 33-37 Chronicle Building, San Francisco, Cal.

In the Circuit Court of the United States, Ninth Circuit, Southern District of California.

Case No. 184.

IN EQUITY.

THE UNITED STATES OF AMERICA,

Plaintiff,

vs.

THE SOUTHERN PACIFIC RAILROAD COMPANY and D. O. MILLS, and GARRIT L. LANSING, Trustees; THE CITY BRICK COMPANY; ATLANTIC AND PACIFIC FIBRE IMPORTING AND MANUFACTURING COMPANY, LIMITED; JULIUS ABRAHAMSON, HUGO ABRAHAMSON, Mrs. JESUS ORD de ANDRADA, Mrs. THOMAS ALLISON, Mrs. MARY BACKMAN, Mrs. MATILDA L. BARBER, HENRY A. BARCLAY, E. T. BARBER, THOMAS N. BECK, A. N. BENHAM, JESSE MARTIN BLANCHARD, E. H. BLOOD, IRA H. BRADSHAW, B. B. BRIGGS, PHILOMELA T. BUNELL, FREDERICK H. BUSBY, A. W. BUTLER, H. A. BOND, WILIAM H. CARLSON, V. E. CARSON, B. F. CARTER, BENJAMIN F. CARTER, HARRY CHANDLER, FRED. CHANDLER, WALTER S. CHAFFEE, J. N. CHAPMAN, F. O. CHISTENSEN, Mrs. L. C. CHORMICLE, BYRON O. CLARK, GEORGE CLAUSSEN, CLARENCE T. CLEVE, NICHOLAS COCHEMS, NATHAN

COLE, Jr., PETER COOK, I. D. CORY, SEATON T. CULL, STEFANO CUNEO, J. A. DAHL, ANDREW J. DARLING, THOMAS A. DELANO, RICHARD DILLON, JOHN DITTER, DAVID DOLBEEN, JOHN F. DUEHREN, JAMES F. DUNSMOOR, EDWARD G. DURRANT, ROBERT DUNN, HENRY ELMS, FAIRMONT LAND AND WATER COMPANY, FARMING AND FRUIT LAND COMPANY, GEORGE W. FENTREES, S. W. FERGUSON, WILLIAM FERGUSON, WILLIAM FREEMAN, JOSEPH W. FURNIVAL, J. GARBER, F. C. GARBUTT, J. DREW GAY, F. A. GEIER, AMBROSE F. GEORGE, WILL D. GOULD, Mrs. MARY L. GOULD, THOMAS E. GOULD, JAMES GRETON, W. F. GROSSER, D. J. HAINES, HERMAN HAINES, JAMES M. HAIT, SIMEON HAMBERG, JACOB HARPE, ALICE A. HALL, CALVIN HARTWELL, WILLIAM T. HAMILTON, JAMES HAMILTON, PETER HAMILTON, JOHN C. HASKELL, JOHN C. HAY, MARY JACKSON HALL, JULIUS HEYMAN, J. M. HILL, JOHN D. HOFFMAN, AUGUST HOELLING, J. F. HOLBROOK, W. R. HUGHES, GEORGE A. HUNTER, J. F. HOUGHTON, E. J. ISMERT, W. W. JENKINS, THOMAS J. JOHANNSEN, D. M. JOHNSON, JOHN J. JONES, A. S. JOSEPH, JOHN KENEALEY, FREDERICK KENWORTHY, RICHARD KICHLINE, JOSEPH KURTZ, CHARLES KUTSCHMAR, Mrs. AM-

MORETTA J. LANTERMAN, T. B. LAWHEAD, L. B. LAWSON, LAWSON M. LA FETRA, STEPHEN L. LEIGHTON, JOHN ROBERTS, and GEORGE L. MESNAGER, Executors of the Last Will and Testament of MIGUEL LEONIS, Deceased, GEORGE LOOMIS, MARION C. LOOP, PABLO LOPEZ, DANIEL LUCE, G. W. MACK, JOHN B. MARTIN, CORA L. MATHIASON, EZRA MAY, ANGUS S. McDONALD, A. M. MELROSE, MRS. FLOSSY MELROSE, W. E. McVAY, THOMAS MENZIES, J. G. MILLER, JOHN MILLION, MRS. MAMIE O. MILLION, H. H. MIZE, THOMAS F. MITCHELL, W. H. MOSELY, L. E. MOSHER, JOSEPH MULLALLY, ANDREW MYERS, D. C. NEWCOMB, ALBERT E. NETTLETON, NORTH PASADENA LAND AND WATER COMPANY, JAMES O'REILLY, GEORGE L. OTT, PACIFIC COAST OIL COMPANY, J. H. PAINTER, M. D. PAINTER, MRS. ANNIE PALEN, J. R. PALLETT, W. A. PALLETT, T. A. PALLETT, C. O. PARSONS, F. W. PATTEE, JAMES PEIRANO, JOHN J. PECKHAM, RAMON PEREA, DANIEL PHELAN, EDWARD E. PERLEY, McH. PIERCE, WILLIAM PISCH, R. M. POGSON, A. W. POTTS, LAFAYETTE S. PORTER, A. J. PRASTER, F. H. PRESCOTT, LEWIS H. PRICE, CHARLES RAGGIS, W. B. RALPHS, JAMES B. RANDOL, C. P. RANDOLPH, F. M. RANDOLPH, FRANCISCO REAL, GEORGE H.

REED, JOHN REA, OTTO RINDERKNECHT, FELIPE RIVERA, JAMES ROBERTSON, GEORGE D. ROWAN, S. D. SAVAGE, JACOB SCHERER, GEORGE W. SEIFERT, LUCIANO SEQUOIS, HENRY C. SHEARMAN, HENRIETTA SHIRPSER, REBECCA JETTA SHIRPSER, DAVID SHIRPSER, MAX SHIRPSER, GIANBATISTA SINACO, J. S. SLAUSON, J. WALLEN SMITH, MRS. MAGGIE SMITH, E. SOMMER, W. A. SPENCER, H. G. STEVENSON, H. J. STEVENSON, M. W. STIMSON, ROBERT STRATHEARN, R. P. STRATHEARN, ELEANOR SUSSMAN, D. M. SUTHERLAND, JOHN SWEENEY, W. H. TAGGART, JAMES P. TAYLOR, MARY G. TONGIER, JAMES R. TOWNSEND, MRS. C. L. TRUE, L. TUNISON, J. S. TURNER, GEORGE S. UMPLEBY, F. VEYSSET, GEORGE VILAS, ALDEN R. VINING, DANIEL A. WAGNER, S. A. WALDRON, W. W. WALLACE, C. H. WATTS, MRS. JULIA J. WHEELER, A. C. WHITACRE, M. L. WICKS, MOYE WICKS, MRS. JENNIE L. WICKS, MARY C. WILLIAMS, C. N. WILSON, ROBERT N. C. WLISON, J. YOUNGBLOOD, and JACKSON A. GRAVES,

Defendants.

Decree.

This cause, having been regularly set for to-day, was on this 28th day of June, 1894, duly heard, in open court.

The plaintiff appeared by George J. Denis, United States Attorney, and Mr. Joseph H. Call, Special Attorney. The defendants appeared by Mr. William F. Herrin, Mr. L. E. Payson and Mr. Joseph D. Redding, their solicitors. Mr. D. L. Russell, and Mr. Horace Bell, also appeared, as solicitors for the executors of the estate of Miguel Leonis, deceased, defendants.

The testimony having been taken and all the evidence introduced, and the cause having been duly argued and submitted, it is by the Court now—

Ordered, adjudged and decreed, that the United States of America is the owner, by title in fee simple absolute, of all the sections of land designated by odd-numbers, in township three (3) and four (4) north, ranges five (5), six (6) and seven (7) west, township one (1) north, ranges sixteen (16), seventeen (17) and eighteen (18) west; township six (6) and south three-fourths of township seven (7) north, ranges eleven (11), twelve (12), thirteen (13), fourteen (14), fifteen (15), sixteen (16), seventeen (17), eighteen (18) and nineteen (19) west. Also all of the sections of land designated by odd numbers, as shown by the public surveys, embraced within the townships from number two (2) north to number five (5) north, both numbers included, and ranges from number eight (8) west to number eighteen (18) west, both numbers included (except sections twenty-three (23) and thirty-five (35) in township four (4) north, range fifteen (15) west, except sections one (1), eleven (11) and thirteen (13) in township three (3) north, range fifteen (15) west); also the unsurveyed lands within said area

which will be designated as odd-numbered sections when the public surveys of the United States shall have been extended over such townships. All the lands are herein described as of San Bernardino base and meridian, and are situated in the State of California.

And the defendants are, and each of them is, forever enjoined and restrained from chopping upon or carrying from the said lands any trees, timber or wood, and from claiming or asserting any right, title or interest in or to the said lands or any thereof—

It is further ordered, adjudged and decreed, that each and every patent heretofore issued by the United States to the Southern Pacific Railroad Company in pursuance of the act of Congress approved July 27, 1866 (14 Stats. 292), and the act entitled "An act to incorporate the Texas & Pacific Railroad Company and to aid in the construction of its road, and for other purposes," approved March 3, 1871 (16 Stats. 573,) and either of said acts, and all acts amendatory and supplemental to either thereof, purporting to convey any of the lands hereinbefore described, to said Southern Pacific Railroad Company, is null, void and vacated.

It is further ordered, adjudged and decreed that each and every patent which has heretofore issued by the United States to the defendants or to any of them, in pursuance of the pre-emption, homestead, or any other general land law of Congress, is excepted from and in no wise affected by the provisions of this decree; nor shall this decree in any wise affect any right which the defendants or any of them other than the said Southern Pacific Railroad Company, now have or may hereafter acquire in, to or respecting any of the lands hereinbefore described, in virtue of the act of Congress entitled "An act to provide for the adjustment of land grants

made by Congres to aid in the construction of railroads and for the forfeiture of unearned lands, and for other purposes," approved March 3, 1887; nor shall this decree in any wise affect any right which the United States may have to hereafter recover from said Southern Pacific Railroad Company the ordinary price for any of said lands patented to said company which the Secretary of the Interior may determine have been sold by said company to either or any of the defendants herein in good faith, and which may be patented to such bona fide purchasers in pursuance of said act of March 3, 1887, if any such there be; nor shall this decree in any wise affect any right, title or interest which the defendant Southern Pacific Railroad Company now has or may hereafter acquire to any right of way for one hundred feet in width on each side of the main track of its road, to station buildings, workshops, depots, machine-shops switches, sidetracks, turntables, water stations and all grounds necessary for the same.

And it is further ordered adjudged and decreed that the plaintiff have and recover its costs of this suit taxed at 1924.05 dollars.

Done and signed this 19th day of July, 1894.

ROSS,
District Judge.

Decree entered and recorded July 19th, 1894.

WM. M. VAN DYKE,
Clerk.

[Endorsed]: No. 184. U. S. Circuit Court, Ninth Circuit, Southern District of California. The United States of America vs. The Southern Pacific Railroad Company et al. Final Decree. Filed July 19, 1894. Wm. M. Van Dyke, Clerk.

Mandate.

UNITED STATES OF AMERICA—ss.

The President of the United States of America, to the Honorable the Judges of the Circuit Court [Seal] of the United Staes for the Southern District of California. Greeting:

Whereas, lately in the United States Circuit Court of Appeals for the Ninth Circuit, in a cause between The Southern Pacific Railroad Company, et al., appellants, and The United States, appellee, wherein the decree of the said United States Circuit Court of Appeals, entered in said cause on the 24th day of June, A. D. 1895, is in the following words, viz:

"This cause came on to be heard on the transcript of the record from the Circuit Court of the United States for the Southern District of California, and was argued by counsel. On consideration whereof, it is now here ordered, adjudged and decreed by this Court that the decree of the said Circuit Court in this cause be, and the same is hereby, affirmed," as by the inspection of the transcript of the record of the said United States 7Y m $?e o-a piuhIsF,cilia cmfwyp shrdlu cmfmb Circuit Court of Appeals, which was brought into the

Supreme Court of the United States by virtue of an appeal agreeably to the act of Congress, in such case made and provided, fully and at large appears;

And whereas, in the present term of October, in the year of our Lord, one thousand eight hundred and ninety-seven, the said cause came on to be heard before the said Supreme Court, on the said transcript of record, and was argued by counsel:

On consideration whereof, it is now here ordered, adjudged and decreed by this Court that the decree of the said United States Circuit Court of Appeals in this cause be, and the same is hereby, affirmed in all respects as to the Southern Pacific Railroad Company as well as to the trustees in the mortgage executed by that company, and also as to the other defendants, subject, however, to the right of the United States to proceed in the Circuit Court to a final decree as to those defendants.

And it is further ordered that this cause be, and the same is hereby remanded to the Circuit Court of the United States for the Southern District of California.

October 18, 1897.

You, therefore, are hereby commanded that such proceedings be had in said cause as according to right and justice, and the laws of the United States ought to be had, the said appeal notwithstanding.

Witness the Honorable MELVILLE W. FULLER, Chief Justice of the United States, the 21st day of De-

cember, in the year of our Lord one thousand eight hundred and ninety-seven.

JAMES H. McKENNEY,
Clerk of the Supreme Court of the United States.

[Endorsed]: No. 184. Supreme Court of the United States. No. 71, October Term, 1897. The Southern Pacific R. R. Co. et al. vs. The United States. Mandate. Filed Jan. 7, 1898. Wm. M. Van Dyke, Clerk.

Clerk's Certificate to Judgment-Roll.

I, Wm. M. Van Dyke, Clerk of the Circuit Court of the United States, for the Southern District of California, do hereby certify the foregoing 133 typewritten pages, numbred from 1 to 133, both inclusive, to be a full, true and correct copy of the following parts of the record in the cause entitled The United States of America, Complainants, vs. Southern Pacific Railroad Company et al., No. 184, viz: Bill of complaint, answer filed May 1, 1891, amended bill of complaint, filed September 25, 1891; answer filed March 14, 1892; amended and supplemental answer to same, filed June 12, 1893, order of court allowing replication to former answer to stand to amended answer, entered June 12, 1893, final decree, filed July 19, 1894, and mandate of Supreme Court filed January 7, 1898, as the same appear on file and of record in my office in said cause.

Attest my hand and the seal of said Circuit Court, this 15th day of March, A. D. 1900.

[Seal] WM. M. VAN DYKE,
Clerk.

[Endorsed]: No. 184. U. S. Circuit Court, Ninth Circuit, Southern District of California. United States of America vs. Southern Pacific Railroad Company et al. Certified copy of parts of record.

Plaintiff's Exhibit "E."

In the Circuit Court of the United States, Ninth Circuit, Southern District of California.

THE UNITED STATES OF AMERICA,
Complainants,
vs.
SOUTHERN PACIFIC RAILROAD COMPANY et al.,
Defendants.
No. 184.

Copy of Endorsements on Exhibit No. 57.

Mem. Jan'y 22, '86. Diagram of this section of A. & P. R. R. filed in Gen'l Land Office, Aug. 15, '72; received at U. S. Land Office, Los Angeles, Dec, 10, '74. Cabot's telegram, May 5, '85. Cu.

Land Dep't, S. P. R. R.. Received Jun. 23, 1885, with letter from Henry Beard, 188, dated June 15th, 1885. Book——. Page——.

(Marked) Defendant's Exhibit before the Special Examiner. No. 57. Stephen Potter, Special Examiner.

I hereby certify that I have compared this copy of map with the certified copy of original map, marked "Defendant's Exhibit before the Special Examiner, No. 57, together with the certificate thereto attached, and

find it to be a full and correct copy thereof. San Francisco, Oct. 16, '93. Stephen Potter, Special Examiner.

Filed Dec. 5, 1893. Wm. M. Van Dyke, Clerk.

Copy of Endorsements on Exhibit No. 54.

(Marked) Defendanits' Exhibit before the Special Examiner, No. 54. Stephen Potter, Special Examiner.

Filed Dec. 5, 1893. Wm. M. Van Dyke, Clerk.

Copy of Endorsements on Exhibit No. 52.

Mem. Jan'y 22, '86. Map received and filed in U. S. Land Office, San Francisco, California, with Commissioner's letter "F" of Nov. 23, 1874, in which he states that the reservation took effect from Aug. 15, 1872. Recd. and filed at S. F. Dec. 9, '74.

Mem. Jan'y. 22, '86. Diagram of this section of A. & P. R. R. filed in Gen'l Land Office, Aug. 15, '72, recd. at Los Angeles U. S. Land Office, Dec. 10, '74. Cabot's telegram, May 5, '85.

Land Dep't. S. P. R. R. Received Jun. 23, 1885, with letter from Henry Beard, dated June 15th, 1885.

(Marked) Defendant's Exhibit before the Special Examiner, No. 52. Stephen Potter, Special Examiner.

I hereby certify that I have compared this copy of map with the certified copy of map marked "Defendants' Exhibit before the Special Examiner, No. 52, and find it to be a full, true and correct copy thereof, and of the certificate thereto attached. San Francisco, Oct. 16, '93. Stephen Potter, Special Examiner.

Filed Dec. 5, 1893. Wm. M. Van Dyke, Clerk.

Copy of Endorsement on Exhibit No. 53.

See letter to R. & R. at Los Angeles and Visalia of April 22d, 1872, withdrawing all the odd section, surveyed and unsurveyed wihin the 30-mile limits, Atlantic and Pacific Railroad and increasing the even sections in the 20-mile limits to 2.50 per acre. Definite location of the road March 12, 1872. Receipt ackd. at Visalia May 9th, 1872. I. 97,829. Receipt ackd. at Los Angeles May 7th, 1872, I. 98,566.

Mem. Jan'y 22, '86. Diagram of this section of A. & P. R. R. (from westernboundary of Los Angeles County, to a point in T. 7 N., R. 7 E., S. B. M.), filed in general land office, March 12/72; received at Los Angeles U. S. land office, May 6, 1872. C. Cabot's telegram, May 5, 1885. Cu.

Land Dep't S. P. R. R. Received June 23, 1885, with letter from Henry Beard, dated June 15, 1885. Book——, Page——.

(Marked) Defendants' Exhibit before the Special Examiner, No. 53. Stephen Potter, Special Examiner.

I hereby certify that I have compared this copy of map with the certified copy of map marked Defendants' Exhibit before the Special Examiner, No. 53, and find it to be a correct copy thereof, and of the certificate thereto attached. Stephen Potter, Special Examiner. San Francisco, Oct. 16, '93.

Filed Dec. 5, 1893. Wm. M. Van Dyke, Clerk.

Clerk's Certificate to Endorsements on Exhibits Nos. 52, 53, 54 and 57.

I, Wm. M. Van Dyke, Clerk of the Circuit Court of the United States, for the Southern District of California, do hereby certify the foregoing to be full, true and correct copies of the endorsements upon the maps of withdrawal of the Atlantic and Pacific Railroad between the Colorado River and Pacific Ocean at Ventura, being Defendants' Exhibits before Special Examiner Potter, numbers 57, 54, 52 and 53, in the cause entitled The United States of America, Complainants, vs. Southern Pacific Railroad Company, et al., No. 184, as the same appear on file and of record in my office in said cause.

Attest my hand and the seal of said Circuit Court, this 19th day of March, A. D. 1900.

[Seal] WM. M. VAN DYKE,
Clerk.

[Endorsed]: No. 184. U. S. Circuit Court, Ninth Circuit, Southern District of California. United States of America vs. Southern Pacific Railroad Company et al. Certified copies of Endorsements on defendants' Exhibits before Special Examiner Potter, Nos. 52, 53, 54 and 57.

Plaintiff's Exhibit "F."

In the Circuit Court of the United States, Ninth Circuit, Southern District of California.

IN EQUITY.

THE UNITED STATES OF AMERICA, Plaintiff,

vs.

THE SOUTHERN PACIFIC RAILROAD COMPANY, D. O. MILLS and GARRIT L. LANSING, Trustees, and THE CITY BRICK COMPANY, THOMAS GOSS, EDWARD SIMMONS, and ALBERT A. HUBBARD, Defendants. } No. 177.

Amended Bill of Complaint.

To the Judges of the Circuit Court of the United States for the Southern District of California:

The United States of America by the Attorney General thereof, brings this, its amended bill, against the Southern Pacific Railroad Company a corporation, organized and existing under and by virtue of the laws of the State of California, D. O. Mills and Garrit L. Lansing trustees, and The City Brick Company, a corporation organized and existing under and by virtue of the laws of the State of California, Thomas Goss, Edward Simmons, and Albert A. Hubbard, each citizens of the State of California, and thereupon your orator shows that the following described land situate in Los Angeles County, California, to wit: all of sections 1, 11 and 13, township 3 north,

range 15 west, S. B. M., and section 35, township 4 north, range 15 west, S. B. M., was acquired by the United State of America from Mexico in 1846, and confirmed by treaty of Guadalupe Hidalgo, in 1848, and was then public land of the United States, not mineral.

Your orator further shows that by the act of Congress approved July 27, 1866, entitled "An act granting lands to aid in the construction of a railroad and telegraph line from the States of Missouri and Arkansas to the Pacific Coast," Congress incorporated the Atlantic and Pacific Railroad Company and granted to said company in aid of the construction of such railroad, a large amount of lands in the State of California and other States and Territories, and to which said act your orator refers. (See U. S. Statutes, vol. 14, page 292.)

Section 3 of said act provides as follows:

"That there be and hereby is granted to the Atlantic and Pacific Railroad Company, its successors and assigns, for the purpose of aiding in the contruction of said railroad and telegraph line to the Pacific Coast, and to secure the safe and speedy transportation of mails, troops, munitions of war and public stores over the route of said line of railway and its branches, every alternate section of public land not mineral designated by odd numbers, to the amount of twenty alternate sections per mile on each side of said railroad line, as said company may adopt, through the territories of the United States, and ten alternate sections of land per mile on each side of said railroad whenever it passes through any State and whenever on the line thereof the United States have full title, not reserved, sold granted or otherwise appropriated, and free

from pre-emption or other claims, or rights, at the time the line of said road is designated, by a plat thereof filed in the office of the commissioner of the general land office, and whenever prior to said time any of said sections or parts of sections shall have been granted, sold, reserved, occupied by homestead settlers or pre-empted, or otherwise disposed of, other lands shall be selected by said company in lieu thereof, under the direction of the Secretary of the Inerior, in alternate sections, and designated by odd numbers, not more than ten miles beyond the limits of said alternate sections, and not including the reserved numbers; provided, that if said route shall be found upon the line of any other railroad route, to aid in the construction of which lands have been heretofore granted by the United States, as far as the routes are upon the same general line, the amount of land heretofore granted shall be deducted from the amount granted by this act."

And Sec. 18 provides as follows:

"Sec. 18. That the Southern Pacific Railroad, a company incorporated under the laws of the State of California, is hereby authorized to connect with the said Atlantic and Pacific Railroad, formed under this act, at such point near the boundary line of the State of California as they shall deem most suitable for a railroad line to San Francisco and shall have a uniform gauge and rate of freight or fare with said road, and in consideration thereof, to aid in its construction, shall have similar grants of land subject to all the conditions and limitations herein provided, and shall be required to construct its road on

the like regulations as to time and manner with the Atlantic and Pacific Railroad herein provided for."

Your orator further shows that said Atlantic and Pacific Railroad Company duly accepted said grant and proceeded to construct said road, and did locate on the ground and designate upon a plat or map the whole of said line of railroad under said act, from Springfield, Missouri, by way of the points and places named in said act, and in the time and manner provided in said act, to the Pacific Ocean, and on or about ————, 1866, did file such plat in the office of the commissioner of the general land office and which designation and location was approved by the Secretary of the Interior at that time, and all the odd sections of public lands on each side of said road, for thirty miles, were thereupon withdrawn from market and reserved from sale.

Your orator further shows the Court that, by section 23 of an act of Congress approved March 3, 1871 (see U. S. Stats., vol. 16, p. 573), entitled (An act to incorporate the Texas & Pacific Railroad Company, and to aid in the construction of its road and for other purposes," it was provided as follows:

"That for the purpose of connecting the Texas and Pacific Railroad with the city of San Francisco, the Southern Pacific Railroad Company of California is hereby authorized (subject to the laws of California) to construct a line of railroad from a point at or near Tehachapi Pass, by way of Los Angeles, to the Texas Pacific Railroad at or near the Colorado River, with the same rights, grants and privileges, and subject to the same limitations, restructions and conditions as were granted to said South-

ern Pacific Railroad Company of California, by the act of July 27, 1866."

"Provided, however, that this section shall in no way affect or impair the rights, present or prospective, of the Atlantic and Pacific Railroad Company or any other railroad company."

Said Southern Pacific Railroad Company which then existed, accepted said grant, and on April 3, 1871, did designate the line of its said road by a plat thereof, which it on that day filed in the office of the commissioner of the general land office.

Your orator further shows that by the act of Congress approved July 6, 1866, entitled "An act to forfeit the lands granted to the Atlantic and Pacific Railroad Company to aid in the construction of a railroad and telegraph line from the States of Missouri and Arkansas to the Pacific Coast, and to restore the same to settlement and for other purposes," all the lands and rights to lands in California thertofore granted and conferred upon said Atlantic and Pacific Railroad Company were forfeited, resumed and restored to the public domain for noncompletion of that portion of said railroad to have been completed in California, no part of said road having been constructed in California.

Your orator alleges that on December 2, 1865, a corporation was organized under the laws of the State of California by the name and style of the Southern Pacific Railroad Company, and under a general law thereof, approved May 20, 1861, entitled "An act to provide for the incorporation of railroad companies and the management of the affairs thereof, and other matters relating there-

to," with the corporate name of the Southern Pacific Railroad Company. Said act is printed in the Statutes of California, 1861, at page 607, and to which said act your orator refers.

Said corporation was formed for the purpose and with the corporate power, as stated in its articles of incorporation, of constructing, owning and maintaining a railroad from some point on the bay of San Francisco, in the State of California, and to pass through the counties of Santa Clara, Monterey, San Luis Obispo, Tulare, Los Angeles and San Diego, to the town of San Diego in said State; thence eastward, through said County of San Diego, to the eastern line of the State of California; there to connect with a contemplated railroad from the eastern line of the State of California to the Mississippi River.

Your orator further shows that on October 11th, 1870, under and by virtue solely of the said general laws of the State of California, authorizing two or more railroad companies to consolidate and amalgamate their capital stock, debts, property, assets and franchises, said Southern Pacific Railroad Company, the San Francisco and San Jose Railroad Company, a railroad corporation then organized and existing under the laws of California, and the Santa Clara and Pajaro Valley Railroad Company, also a railroad corporation then organized and existing under the laws of California, did, without any authority from the United States, by a contract in writing agree to consolidate and amalgamate their capital stock, debts, property, assets and franchises, making a different capital, issuing new stock, and creating a new and different corporation under the name and style of the Southern Pacific Railroad

Company, which contract was signed, published and filed, as provided by the laws of California.

Your orator further alleges that on the 12th day of August, 1873, under and by virtue solely of the law of the State of California of May 20, 1861, before referred to, authorizing the amalgamation and consolidation of two or more railroad companies, the said Southern Pacific Railroad Company pretended to be organized in 1870 as aforesaid, and the Southern Pacific Branch Railroad Company, each organized and then existing railroad companies under and by virtue of the laws of California, did, by a contract in writing, without authority from the United States, agree to amalgamate and consolidate their capital stock, debts, property, assets and franchises, creating a new capital stock and issuing new certificates of stock and canceling the old ones; and creating a new and different corporation by the name and style of the Southern Pacific Railroad Company, a copy of which new articles of association and incorporation are hereto attached marked Exhibit "A-B," and did duly publish and file such new articles as required by the laws of California.

And your orator alleges that the Southern Pacific Railroad Company, which was organized and created on August 12, 1873, by the said pretended articles of amalgamation and consolidation of said several railroad companies as heretofore set forth, did construct and complete a railroad from Tehachapi Pass by way of Los Angeles to the Colorado River in the manner and within the time prescribed in said act of Congress in which the Southern Pacific Railroad Company therein named was authorized and empowered to do, and there was not, and is not now,

any railroad or part thereof constructed or completed under said act or between said points otherwise than as aforesaid.

Your orator further shows that the general routes of said Atlantic and Pacific Railroad Company and of said Southern Pacific Railroad Company under said act of March 3, 1871, as said routes were located as aforesaid, cross each other in the State of California.

Your orator further alleges that said lands in suit hereinbefore described, are situated on the general line of the said designated route of the Atlantic and Pacific Railroad Company, less than 20 miles therefrom and are less than 20 miles from said designated route of said Southern Pacific Railroad Company, and in such overlapping limits on the general route of each of said lines of road.

Your orator further shows that said lands have never been granted, sold, reserved, occupied by homestead settlers, pre-empted or otherwise disposed of by the United States, or by the Mexican or Spanish Governments, or any other government or authority, in whole or in part, or any estate or interest therein, otherwise than as set forth herein, and are not mineral lands.

Your orator alleges that said Southern Pacific Railroad Company, to which corporation said grant was made by said act of Congress of March 3, 1871, did not build or construct any portion of said railroad.

Your orator alleges upon information and belief that the defendants herein have pretended conveyances executed in due form of law from said Southern Pacific Railroad Company, the corporation organized in the year 1870, as aforesaid, to which company said grant of March 3, 1871,

was made and from said Southern Pacific Railroad Company, organized on August 12, 1873, as aforesaid, purporting to sell and convey to them, the said defendants, the said land described as aforesaid.

Your orator alleges that defendants now claim to own said lands and deny the plaintiff's right and title thereto, and have been during the past five years at many and divers times to your orator unknown, and are now, wantonly and unlawfully cutting and destroying the natural timber on said lands without any license or authority, and to the plaintiff's great and irreparable injury.

Your orator further shows that there is now on said lands a large amount of wood which the defendants have unlawfully chopped from trees on said lands, and at divers times during the last five years the defendants have unlawfully entered upon said lands, chopped down the timber and trees thereon, then the property of your orator, carried away such timber and used and converted the same to their own use, the amount and value of which is unknown to your orator, and are now removing from said lands wood cut thereon and are threatening to chop down other trees on said land, remove all said wood, and unless enjoined will do so, to the great and irreparable injury of the plaintiff.

Your orator further shows that the amount in controversy herein exceeds the sum or value of $5,000, exclusive of interest and costs.

Your orator alleges that by reason of the premises, the defendants herein have surrendered and released to the United States all rights and franchises and lands, if they had any such, granted by said acts of Congress

aforesaid, and which the plaintiff prays may be enforced as to the land in suit herein, without prejudice to other rights of the United States.

In tender consideration whereof, and for as much as the plaintiff is remediless at and by strict rules of the common law, and can only be relieved in a Court of Equity, your orator prays that its title to said lands may be quieted, and that the defendants and each of them be forever enjoined from asserting or claiming any right or title thereto adverse to the plaintiff, and your orator prays that the defendants each and their agents be forever enjoined from cutting any tree or wood upon said land and from in any way injuring the trees growing thereon, and from removing or causing to be removed from said land any wood or timber now cut thereon or hereafter cut thereon.

Your orator further prays for an accounting from the defendants for all wood sold by them and each of them, and for all the money, and profit realized therefrom, and for such other and further relief as the Court may deem equitable in the premises.

May it please your Honors to grant unto your orator a writ of injunction issuing out of and under the seal of this Honorable Court, directed to defendants, The Southern Pacific Railroad Company, D. O. Mills and Garrit L. Lansing, trustees, and The City Brick Company, Thomas Goss, Edward Simmons and Albert A. Hubbard, enjoining them and each of them from asserting any right, claim or title to said lands, and from denying plaintiff's title thereto, and enjoining them

each from cutting any tree or wood now on said land, and from removing any wood or timber now cut on said land.

May it please your Honors to grant unto your orator a writ of subpoena issuing out of and under the seal of this Honorable Court, to be directed to the Southern Pacific Railroad Company, D. O. Mills and Garrit L. Lansing, trustees, and The City Brick Company, Thomas Goss, Edward Simmons and Albert A. Hubbard, commanding them each, on a certain day and under a certain penalty therein to be inserted, to be and appear before your Honors, and then and there answer the premises and further to stand to and abide such order and decree therein as shall be agreeable to equity and good conscience, and your orator will ever pray.

Your orator waives answer under oath.

JOSEPH H. CALL,

Special Asst. U. S. Attorney and of Counsel for Plaintiff.

WILLOUGHBY COLE,

United States Attorney, Southern Dist. Cal.

Exhibit "A-B."

Articles of association, amalgamation and consolidation, made and executed on this the twelfth day of August, A. D. 1873, by and between the Southern Pacific Railroad Company, of the first part, and the Southern Pacific Branch Railroad Company of the second part:

Witnesseth: That whereas, the said party of the first part heretofore, to wit, on the eleventh day of October,

A. D. 1870, was duly incorporated and organized under the laws of the State of California, by the amalgamation and consolidation of the following railroad corporations theretofore existing under the laws of said State, to wit, The San Francisco and San Jose Railroad Company, The Santa Clara and Pajaro Valley Railroad Company, the Southern Pacific Railroad Company, and the California Southern Railroad Company, pursuant to articles of amalgamation and consolidation of that date by them agreed upon, which articles were subsequently amended, to wit, on the eleventh day of April, A. D. 1871, by virtue of the laws of said State, whereby said corporation became duly incorporated and organized under the laws of said State for the purpose of purchasing, constructing, owning, maintaining and operating a continuous line of railroad from the city of San Francisco, in the State of California, through the city and county of San Francisco, the counties of San Mateo, Santa Clara, Monterey, Fresno, Tulare, Kern, San Bernardino and San Diego to some point on the Colorado River, in the southwestern part of the State of California, a distance of seven hundred and twenty miles, as near as may be, also a line of railroad from a point at or near Tehachapi Pass, by way of Los Angeles, to the Texas Pacific Railroad at or near the Colorado River, a distance of three hundred and twenty-four miles, as near as may be; also a line of railroad from the town of Gilroy, in the county of Santa Clara, in said State, passing through said county and the counties of Santa Cruz and Monterey, to a point at or near Salinas City,

in said last-named county, a distance of forty-five miles, as near as may be, and also such branches to said lines as the board of directors of said corporation may consider advantageous to said corporation and direct to be established.

And whereas, the said party of the second part was, heretofore, to wit, on the twenty-third day of December, A. D. 1872, duly incorporated and organized under the laws of the State of California, for the purpose of purchasing, constructing, owning, maintaining and operating a railroad from a point on the Southern Pacific Railroad (the railroad of the party of the first part) at or near Salinas City in the county of Monterey, southeasterly to a point in Kern County, south of Tulare Lake, intersecting the San Joaquin Valley division of the said Southern Pacific Railroad; also from a point on the above-described line, at or near San Miguel in San Luis Obispo County; thence in a southerly direction to a point of intersection in Los Angeles County, with the line of the said Southern Pacific Railroad running from Tehachapi Pass by way of Los Angeles to Fort Yuma, said road passing into or through the counties of Monterey, San Luis Obospo, Kern, Santa Barbara, and Los Angeles, and said roads, in the aggregate, being, as near as may be, four hundred and twenty-eight miles in length.

And whereas, said parties believe a consolidation and amalgamation of their capital stocks, debts, properties, assets, roads, telegraphs, land and franchises, will be mutually advantageous:

And whereas, more than three-fourths in value of all the stockholders in interest of each of said parties, have consented in writing to such amalgamation and consolidation upon the terms and conditions hereinafter set forth:

Now, therefore, under and by virtue of the statute of the State of California, in such case made and provided, the said parties do hereby mutually covenant and agree, each with the other, to the following articles, to wit:

Article First: Said parties do hereby amalgamate and consolidate themselves into a new corporation, under the name and style of the Southern Pacific Railroad Company, which new corporation shall continue in existence for the period of fifty years from the date of these articles;

And they further consolidate and amalgamate their several capital stocks, debts, properties, assets, roads, telegraphs, lands, franchises, rights, titles, privileges, claims and demands of every kind whatsoever, as well in possession as in expectancy at law or in equity, and do grant, convey and vest the same in the said new corporation, as fully as the same are now severally held and enjoined by them respectively, subject, however, to all conditions, obligations, stipulations, contracts, agreements, liens, mortgages, encumbrances, judgments, claims and charges thereon or in anywise affecting the same or any part thereof.

Article Second: The object and purpose of said new corporation shall be to purchase, construct, own, maintain and operate the several lines of railroad herein-

before described, to wit, a line of railroad from the city of San Francisco, in the State of California, through the city and county of San Francisco, the Counties of San Mateo, Santa Clara, Monterey, Fresno, Tulare, Kern, San Bernardino and San Diego, to some point on the Colorado River, in the southeastern part of the State of California, a distance of seven hundred and twenty miles, as near as may be, also a line of railroad from a point at or near Tehachapi Pass, by way of Los Angeles to the Texas Pacific Railroad at or near the Colorado River, passing through the counties of Los Angeles, San Bernardino, and San Diego, a distance of three hundred and twenty-four miles, as near as may be; also a line of railroad from the town of Gilroy in the county of Santa Clara in the same State, passing through said county and the counties of Santa Cruz and Monterey, to a point at or near Salinas City in said last-named county a distance of forty-five miles, as near as may be; also a line of railroad from a point on the line thirdly above described at or near Salinas City, county of Monterey, southeasterly through said county and into Kern county, to a point south of Tulare Lake in said last-named county, intersecting at said point the line of railroad first above described, a distance of one hundred and eighty miles as near as may be; also a line of railroad from a point on the last above-described line, at or near San Miguel in the county of San Luis Obispo; thence in a southerly direction through said county, the county of Santa Barbara and into the county of Los Angeles to a point

of intersection with the line of railroad secondly above described, to wit: the line from Tehachapi Pass by way of Los Angeles to the Texas Pacific Railroad at or near the Colorado River, a distance of two hundred and forty miles, as near as may be; making in all fifteen hundred and nine miles, as near as may be, and such branches to said lines as the board of directors of said new corporation may hereafter from time to time establish.

Article Third: The board of directors of said new corporation shall consist of seven persons and the following named persons shall act as such directors until their successors shall have been duly elected pursuant to the by-laws of said new corporation, hereafter to be adopted, viz: C. P. Huntington, D. D. Colton, Robert Robinson, Charles Mayne, S. T. Gage, E. N. Miller, Jr., and J. L. Willcutt.

Article Fourth: The capital stock of said new corporation shall be ninety million dollars divided into nine hundred thousand shares of one hundred dollars each, that sum being the contemplated actual cost of said railroads, including telegraph lines, rolling stock, motive power, shops, depots, etc.

Article Fifth: Each stockholder of each said parties shall have the same number of shares of the capital stock of the new corporation which he now owns and holds of the capital stock of his respective company, upon the same terms and conditions, and shall be entitled to receive from said new corporation certificates therefor, where the same has been fully paid up, upon

the surrender of the certificates now held by him, and where the same has not been fully paid up, he shall receive such other evidence of his ownership as the board of directors of said new corporation shall direct upon the surrender of such evidence of his ownership of such unpaid stock as he may now hold.

Article Sixth: And the said several parties of the first and second parts, each for itself, hereby sells, assigns, transfers, grants, bargains, releases and conveys to the said new and consolidated company and corporation, its successors and assigns forever, all its property, real, personal and mixed of every kind and description; all its capital stock, all its interest in the shares of its capital stock subscribed but not fully paid for; all credits, effects, judgments, decrees, contracts, agreements, claims, dues and demands of every kind and description, and all rights, privileges and franchises, corporate and otherwise, held, owned or claimed by said parties of the first and second parts, or either of them in possession or expectancy, either at law or in equity, subject, however, to all conditions, obligations, stipulations, contracts, agreements, liens, mortgages, encumbrances, claims and charges thereon, or in any wise affecting the same.

Article Seventh: The said new and consolidated company and corporation is to be liable for and shall fulfill and perform, do and pay all and each of the contracts and agreements, covenants, duties, obligations, liabilities, debts, dues and demands of the said several parties of the first and second parts, but this amalgamation and consolidation shall not in any way relieve

the said parties of the first and second parts, or the stockholders thereof from any and all just liabilities.

In testimony whereof, the said party of the first part has caused this instrument to be signed by its vice-president (the president being absent) and its secretary, and its corporate seal to be thereunto affixed, and the said party of the second part has caused this instrument to be signed by its president and secretary and its corporate seal thereunto affixed, in pursuance of orders and resolutions of their several boards of directors, made on the twelfth day of August, 1873.

SOUTHERN PACIFIC RAILROAD COMPANY,

[Seal] By DAVID D. COLTON,
Vice-President.

J. L. WILLCUTT,
Secretary.

SOUTHERN PACIFIC BRANCH RAILROAD COMPANY,

[Seal] By B. R. CROCKER,
President.

By E. H. MILLER, Jr.,
Secretary.

We, the undersigned, being the holders of stock to the extent of more than three-fourths of the value of all stockholders in interest of said Southern Pacific Railroad Company, party of the first part, to the foregoing new Articles of Association, Amalgamating and Consolidating, the said parties of the first and second parts hereby consents to such amalgamation and consolida-

tion and to the said new articles of association, this twelfth day of August, A. D. 1873.

LELAND STANFORD,
CONTRACT & FINANCE CO.
Pr. W. E. BROWN, Secy.

MARK HOPKINS.
ROBERT ROBINSON.
S. T. GAGE.
CHAS. MAYNE.
DAVID D. COLTON.
J. L. WILLCUTT.
E. H. MILLER, Jr.

We, the undersigned, being the holders of stock to the extent of more than three-fourths of the value of all stockholders in interest of the said Southern Pacific Branch Railroad Company, party of the second part to the foregoing new Articles of Association, Amalgamating and Consolidating the said parties of the first part and second parts, hereby consents to such amalgamation and consolidation, and to the said new articles of association, this twelfth day of August, A. D. 1874.

LELAND STANFORD.
E. H. MILLER, Jr.
ALBERT GALLATIN.
MARK HOPKINS.
E. W. HOPKINS.
C. H. CUMMINGS.
B. R. CROCKER.

State of California,
Department of State. }

I, W. C. Hendricks, Secretary of the State of California, do hereby certify that I have carefully compared the annexed copy of Articles of Association, Amalgamation and Consolidation between the Southern Pacific Railroad Co., and the Southern Pacific Branch Railroad Co., with the original now on file in my office, and that the same is a correct transcript therefrom and of the whole thereof. Also, that this authentification is in due form and by the proper officer.

Witness my hand and the Great Seal of State, at office in Sacramento, California, the 5th day of September, A. D. 1889.

[Seal]

W. C. HENDRICKS,
Secretary of State.
By H. B. Davidson,
Deputy.

[Endorsed]: No. 177. In U. S. Circuit Court, Southern District of California. United States vs. Southern Pacific Railroad Company, The City Brick Company et al. Amended Bill. Filed April 15th, 1890. Wm. M. Van Dyke, Clerk. J. H. Call, Spec. Asst. U. S. Atty.

In the Circuit Court of the United States, Ninth Circuit, Southern District of California.

IN EQUITY.

THE UNITED STATES OF AMERICA,

Complainant,

vs.

THE SOUTHERN PACIFIC RAILROAD CO., D. O. MILLS and GERRIT L. LANSING, Trustees, and the CITY BRICK CO., THOMAS GOSS, EDWARD SIMMONS and ALBERT A. HUBBARD,

Respondents.

No. 177.

Answer of the Respondents to the First Amended Bill of Complaint.

Now come the respondents above named in the above-entitled cause, and for answer to the first amended bill in equity filed herein and making answer to said bill and to so much thereof as they are advised is material and now and at all times hereafter saving and reserving unto themselves all benefit and advantage of exception which may be had or taken to the many errors, uncertainties and other imperfections in the said bill contained, for answer thereunto or to so much and such parts thereof as these respondents are advised is material or necessary for them to make answer unto, answering, say:

I.

The respondents allege that the Southern Pacific Railroad Company, one of the respondents herein, is a corporation, organized and existing under the laws of the United States and the laws of the State of California.

II.

The respondents admit that the lands mentioned in said bill were acquired by the United States from the Republic of Mexico, about the year 1846, said lands now being described according to the United States surveys, as, all of sections 1, 11 and 13, Tp. 3 N., R. 15 W., S. B. M.; and section 35, Tp. 4 N., R. 15 W., S. B. M., and that said lands were in the year 1848, public lands of the United States not mineral.

III.

The respondents admit that by the act of Congress, approved July 27, 1866, entitled "An act granting lands to aid in the construction of a railroad and telegraph line from the States of Missouri and Arkansas to the Pacific Coast," Congress incorporated the Atlantic and Pacific Railroad Company and granted to said Company in aid of the construction of such railroad and upon the terms and conditions in said act expressed, but not otherwise, a large amount of lands, but respondents deny that by said act any grant of lands was made to the Atlantic & Pacific Railroad Company, which attached to the surface of the earth in the State of California or took any lands in the State of California from out the public domain.

IV.

The respondents admit that said Atlantic & Pacific Railroad Company accepted said grant of July 27, 1866, within the time provided in said act, but the respondents deny that said company did designate the line of its route or did locate on the ground and designate upon a plat or map the whole of said line of railroad under said act; the respondents deny that the said company did locate on the ground or designate upon a plat or map the whole of said line of railroad under said act, from Springfield, Missouri, by way of the points or places named in said act or in the time and manner provided in said act, to the Pacific Ocean or to any points whatever; the respondentes deny that said company ever lawfully located or designated any line of railroad in the State of California which it was authorized to locate, designate or construct; the respondents deny that the Atlantic & Pacific Railroad Company did on the —— day of ————, 1866, or upon any date or dates, file such plat in the office of the commissioner of the general land office; the respondents deny that said designation or location was approved by the Secretary of the Interior at that time or at all; the respondents deny that all or any of the odd sections of public lands on each side of said route for thirty miles were thereupon withdrawn from market or reserved from sale in any way whatsoever.

V.

The respondents deny that the orders issued by the commissioner of the general land office on or about

March 12, 1872, or April 22, 1872, for the withdrawal of lands on the line of the Atlantic & Pacific Railroad, or any executive orders for withdrawal from market or reservation from sale of public lands for the benefit of the Atlantic & Pacific Railroad Company or under its grant, included the lands involved in this action. Said lands had theretofore been withdrawn for the Southern Pacific Railroad Company and neither said orders of March 12, 1872, or April 22, 1872 or any other executive orders for the benefit of the Atlantic & Pacific Railroad Company took effect upon the lands herein claimed by the complainant or any part thereof, because said lands had, by previous executive orders, been withdrawn for the benefit of the Southern Pacific Railroad Company, one of the respondents herein and were expressly excepted from withdrawal orders to be made for the benefit of the said Atlantic & Pacific Railroad Company and the respondents pray leave to refer to any executive order mentioned or referred to in the bill and the same may be produced herein for the precise purport and contents thereof. The respondents aver that the lands involved in this suit had previously, on the 3d of April, 1871, by the filing of the map of definite location of the Southern Pacific Railroad Company, one of the respondents herein, been duly reserved from sale by and under the said twenty-third section of the act of Congress of March 3, 1871, and the sixth section of the act of Congress of July 27, 1866; and allege also that said lands have been duly withdrawn from market and appropriated for the use of the Southern Pacific Railroad

Company, one of the respondents herein, by the order of the commissioner of the general land office to the register and receiver of the United States land office at Los Angeles, issued April 21, 1871.

VI.

The respondents admit that by section twenty-three of an act of Congress, approved March 3, 1871, U. S. Statutes, volume 16, page 573, entitled "An act to incorporate the Texas & Pacific Railroad Company, and to aid in the construction of its road and for other purposes," it was provided as follows:

"That for the purpose of connecting the Texas & Pacific Railroad with the city of San Francisco, the Southern Pacific Railroad Company of California, is hereby authorized (subject to the laws of California) to construct a line of railroad from a point at or near Tehachapi Pass, by way of Los Angeles, to the Texas Pacific Railroad at or near the Colorado river, with the same rights, grants and privileges, and subject to the same limitations, restrictions and conditions as were granted to aid Southern Pacific Railroad Company of California, by the act of July 27, 1866."

"Provided, however, that this section shall in no way affect or impair the rights, present or prospective, of the Atlantic & Pacific Railroad Company, or any other railroad company." The respondents admit and allege that the said Southern Pacific Railroad Company which then existed, accepted said grant on April 3, 1871, and did designate the line of its said road by a plat thereof

which it, on that day, filed in the office of the commissioner of the general land office.

VII.

The respondents admit that by the act of Congress, approved July 6, 1886, entitled, "An act to forfeit the lands granted to the Atlantic and Pacific Railroad Company to aid in the construction of a railroad and telegraph line from the States of Missouri and Arkansas to the Pacific Coast, and to restore the same to settlement and for other purposes," all the lands and rights to lands in California theretofore granted and conferred upon said Atlantic and Pacific Railroad Company were forfeited, resumed and restored to the public domain for noncompletion of that portion of said railroad to have been completed in California, no part of said road having been constructed in California.

VIII.

The respondents admit that on December 2, 1865, a corporation was organized, under the laws of the State of California, by the name and style of the Southern Pacific Railroad Company and under a general law thereof, approved May 20, 1861, entitled, "An act to provide for the incorporation of railroad companies and the management of the affairs thereof and other matters relating thereto, with the corporate name of the Southern Pacific Railroad Company." Said act is printed in the Statutes of California, 1861, at page 607; admit that said corporation was formed for the purpose and with the corporate power, as stated in its articles of incorporation.

IX.

The respondents deny that on October 11, 1870, the Southern Pacific Railroad Company, the San Francisco and San Jose Railroad Company, a railroad corporation then organized and existing under the laws of California and the Santa Clara and Pajaro Valley Railroad Company, by virtue solely of the said general laws of the State of California, authorizing two or more railroad companies to consolidate and amalgamate in their capital stock, debts, property, assets and franchises, did, without any authority from the United States, agree, by contract, in writing, to consolidate and amalgamate their capital stock, debts, property, assets and franchises; deny that by so doing they made a different capital or issued new stock and created a new and different corporation under the name and style of the Southern Pacific Railroad Company. The respondents allege that said Southern Pacific Railroad Company, the San Francisco and San Jose Railroad Company and the Santa Clara and Pajaro Valley Railroad Company, did, on the 11th of October, 1870, enter into articles of amalgamation and consolidation, a copy of which articles is hereto attached and made a part of this answer and marked Respondents' Exhibit "A"; the respondents allege that said amalgamation was made with ample authority, both under the general and special laws of the State of California and under the sanction and authority and consent and ratification of the United States of America.

X.

Respondents deny that on the 12th of August, 1873, or upon any other date, under or by virtue solely of the law of the State of California, of May 20, 1861, before referred to, authorizing amalgamation and consolidation of two or more railroad companies, the said Southern Pacific Railroad Company pretended to be organized in 1870, as aforesaid, or the Southern Pacific Branch Railroad Company or either of them organized or then existing railroad companies under or by virtue of the laws of California, did, by a contract in writing, without authority from the United States agree to amalgamate or consolidate their capital stock or debts or property or assets or franchises, creating a new capital stock or issuing new certificates of stock or canceling the old ones or creating a new or different corporation by the name and style of the Southern Pacific Railroad Company; on the contrary, the respondents allege that on the 12th day of August, 1873, the Southern Pacific Railroad Company, one of the respondents and the Southern Pacific Branch Railroad Company did enter into articles of incorporation and amalgamation, a copy of which is attached to the bill, and the respondents refer to said articles of consolidation and the contents thereof for a proof as to what was done on said day. The respondents allege that said contract and agreement and consolidation were with the authority, consent, ratification and approval of the United States of America and were within authority of law and were entered into by virtue of the general and special laws of

the State of California in that behalf provided. The respondents admit that all of the articles of amalgamation and consolidation referred to in said bill of complaint were duly published and filed as required by the laws of the State of Californoa.

XI.

The respondents allege that the Southern Pacific Railroad Company, organized under the laws of the State of California in 1865, is one of the respondents herein and is the same Southern Pacific Railroad Company as was mentioned in the act of Congress of July 27, 1866, above referred to and is the same Southern Pacific Railroad Company as is mentioned in the articles of consolidation and amalgamation above referred to, dated, respectively, October 11, 1870 and August 12, 1873, and is the same Southern Pacific Railroad Company that is mentioned in the act of Congress of March 3, 1871, above referred to. The respondents allege that the United States of America by said acts of Congress, duly recognized the said Southern Pacific Railroad Company and the contracts of amalgamation and consolidation entered into as above recited and duly ratified the same; the respondents allege that the said Southern Pacific Railroad Company is the same Southern Pacific Railroad Company to-day now sued upon as one of the respondents in this action and is mentioned in all of the foregoing statutes and articles.

XII.

The respondents deny that the Southern Pacific Railroad Company "which was organized or created on

August 12, 1873, by the said pretended articles of amalgamation and consolidation of said several railroad companies as heretofore set forth" did construct and complete a railroad from Tehachapi Pass by way of Los Angeles to the Colorado river in the manner and within the time prescribed in said act of Congress in which the Southern Pacific Railroad Company therein named was organized or empowered to do, and deny that there was not or is not now any railroad or part thereof, constructed or completed under said act or between said points otherwise than as aforesaid; the respondents allege that the Southern Pacific Railroad Company, one of the respondents herein, which is the same Southern Pacific Railroad Company that is mentioned in the act of Congress of July 27, 1866, and the act of Congress of March 3, 1871, and the articles of association and consolidation herein set forth, did construct and complete a railroad from Tehachapi Pass by way of Los Angeles to the Colorado river in the manner and within the time prescribed in the said acts of Congress, and that the said railroad company has ever since been in running order and operating for the benefit of the United States and in accordance with all of the terms and conditions mentioned in said acts of Congress.

XIII.

The respondents deny that the general routes of the said Atlantic & Pacific Railroad Company and of the said Southern Pacific Railroad Company, under said act of March 31, 1871, as said routes were located as aforesaid, cross each other in the State of California in any

way whatsoever or at all; the respondents deny that said lands in suit hereinbefore described are situated on the general line of the said designated route of the Atlantic & Pacific Railroad Company within any distance of said designated route or less than twenty miles therefrom; the respondents allege that the Atlantic & Pacific Railroad Company never did designate its route in the State of California and never located its line in the State of California, in any manner whatsoever, but, on the contrary, wholly failed to do so; the respondents allege that the Atlantic & Pacific Railroad Company filed certain fragmentary maps of proposed route within the State of California which are attached to this answer and made a part hereof and marked Respondents' Exhibit "C"; that said maps were filed on different dates and do not connect with each other and show an attempted location from the Bay of San Francisco down the coast of California and thence through the State of California, as appears upon said maps to which reference is hereby made; that said maps were filed upon different dates in the Interior Department to wit, on March 12, 1872, and April 16, 1874, and do not constitute a map or plat of definite location in accordance with the terms of the act of Congress of July 27, 1866. Your respondents show that said Atlantic & Pacific Railroad Company was authorized to construct a road and to receive a grant in the State of California, from the Colorado river at or near the thirty-fifth parallel of latitude and thence by the most direct and eligible route to the Pacific Ocean; that said company

never did locate its road in accordance with the terms of said act of Congress; that said maps heretofore mentioned, which were filed or attempted to be filed by said Atlantic & Pacific Railroad Company in the office of the commissioner of the general land office were in direct violation of the terms of the act of Congress and in a direction opposite to said terms and upon the surface of the earth of a portion of California never intended by said act of Congress to be built upon or constructed for railroad purposes by said Atlantic & Pacific Railroad Company.

XIV.

The respondents admit that said lands are less than twenty miles from the designated route of said Southern Pacific Railroad Company, but deny that said lands are in any overlapping limits on the general route of the line of any other railroad company or of the Atlantic and Pacific Railroad Company and the Southern Pacific Railroad Company. The respondents deny that there are any overlapping limits of any railroad company which affect said lands. The respondents allege that the said Atlantic & Pacific Railroad Company never did locate or designate its line in the State of California or create, in any way, or have any limits for the line of its road in the State of California; the respondents admit that said lands have never been pre-empted or disposed of by the Mexican or Spanish Governments or any other Government or authority, but deny, that said lands have never been granted, sold reserved or otherwise disposed of by the United States or any other Government or authority in whole or in part, or any estate or interest therein, otherwise than

as set forth in the bill of complaint, but, on the contrary, allege, that said lands were granted to the Southern Pacific Railroad Company, one of the respondents herein, by the act of Congress of March 3, 1871, and allege that upon the filing of the map of definite location on April 3, 1871, which was done on that day, said lands were shown to be within the granted or twenty-mile limits of said grant to said Southern Pacific Railroad Company and did become, on said day, a part of the defined granted limits of said grant to said company and the respondents further allege that the railroad opposite to said lands was duly constructed and in operation in the time required by law.

XV.

The respondents admit that said lands are not mineral lands but that the same are agricultural lands.

XVI.

The respondents deny that said Southern Pacific Railroad Company, to which corporation said grant was made by said act of Congress of March 3, 1871, did not build or construct any portion of said railroad, but, on the contrary, allege, that it did construct the same and the whole thereof and is the same corporation mentioned in said act of Congress.

XVII.

The respondents allege that the Southern Pacific Railroad Company fully constructed and completed its road, according to said acts of Congress and the construction thereof has been accepted and approved by the President of the United States; that the construction of the last

mile of said road was accepted by President Hayes on the 23d day of January, 1878; that commissioners duly appointed by the President made and filed their reports and the same were accepted by the Secretary of the Interior and the President of the United States, and this action of the Secretary and President is binding upon the United States and its validity cannot be called in question in this cause.

XVIII.

The respondents allege that said Atlantic & Pacific Railroad Company's pretended line was not located or attempted to be located until long subsequent to April 3, 1871; that when sought or pretended to be located, it was found to be on a wholly unauthorized route, not prescribed or permitted under any act of Congress in relation to or concerning said Atlantic and Pacific Railroad Company.

XIX.

The respondents, the City Brick Co., Thomas Goss, Edward Simmons and Albert A. Hubbard, allege that they purchased the land and premises involved in this cause from the Southern Pacific Railroad Co., paying a large sum of money therefor to the Southern Pacific Railroad Co.; that said purchase was made in due form by a contract and deed in writing; that the said respondents purchased said land after the said Southern Pacific Railroad Company had constructed its road opposite to said land and after said road had been accepted by the President of the United States as duly and properly completed; that said purchase was made in good faith and said re-

spondents have and are relying upon the representations made by the United States and upon the conduct of the United States towards the respondent, the Southern Pacific Railroad Company, under said acts of Congress and said respondents declare themselves to be innocent and bona fide purchasers of said land and premises.

XX.

The respondents deny that they at any time have or are now wantonly or unlawfully cutting or destroying the natural timber on said lands without any license or authority or to the plaintiff's great or irreparable injury or at all; the respondents deny that there is now on said lands a large amount of wood or any amount which the respondents have unlawfully chopped from off the trees on said lands; deny that at divers times or at all during the past five years or during any period of time that the respondents have unlawfully entered upon said lands or chopped down the timber or trees thereon which was the property of the complainant; deny that they have carried away such timber or used or converted the same to their own use; deny that they are now removing from said lands wood cut thereon or are threatening to chop down other trees on said land or to remove all of said wood; deny that, unless enjoined, they will do so to the great and irreparable injury of the complainant; on the contrary, the respondents allege that whatever they have done upon said land and premises has been done by virtue of their ownership therein and with full power and right in the premises and lawful; the respondents admit that the subject matter in controversy in this action ex-

ceeds the amount of five thousand dollars ($5,000), exclusive of interest and costs of suit.

XXI.

The respondents deny that by reason of the premises or at all they have surrendered or released to the United States any or all rights or franchises or lands granted to them by said acts of Congress aforesaid, and deny that the complainant has any right, of any nature, to the lands in suit herein that should be enforced.

XXII.

These respondents deny that the United States had or has power or authority to elect, has elected or does elect, to hold, select, reserve or set apart the tracts of land in the bill described as part of any lands granted to the Atlantic & Pacific Railroad Company by said act of Congress of July 27, 1866, and deny that said lands in the bill mentioned were or have been or can be, excluded or deducted from the lands granted to these respondents either on account of the grant to the said Atlantic and Pacific Railroad Company or for any other cause. The respondents deny that the Attorney General of the United States or any other officer thereof has any right, power or authority for the United States or on its behalf to designate, select or claim said lands as lands granted to the Atlantic and Pacific Railroad Company.

XXIII.

The respondents deny that the route of the Southern Pacific Railroad Company, as designated by the plat thereof, filed in the office of the commissioner of the gen-

eral land office, as aforesaid, and as located and constructed, is, and deny that it was necessary that it should be upon the same general lines as that of the said Atlantic and Pacific Railroad Company, as designated by the plat thereof filed, or allaged or pretended to have been filed, by said company, as aforesaid; and deny that all or any of the lands in suit herein are situated opposite to any portion of said routes which are upon the same general line. The respondent, the Southern Pacific Railroad Company, shows that the law of its grant required that its road should commence at Tehachapi Pass and extend to the Texas Pacific Railroad near the Colorado River, and should go by way of Los Angeles. Tehachapi Pass is in Tp. 11 N., of R. 12 W., San Bernardino meridian, and Los Angeles is in Tp. 1 S., R. 13 W., and the general course of the Railroad from Tehachapi Pass to Los Angeles is nearly in a direct line from north to south. The Atlantic & Pacific Railroad, if it had been built, was to have extended from a crossing of the Colorado River near the 35th parallel of latitude to the Pacific Ocean. The point chosen for crossing the Colorado River by the Atlantic & Pacific Company is in latitude about 34° 40′ north.

The proposed or suggested location of the Atlantic & Pacific Railroad opposite the land in controversy extended from a point on the west boundary of Los Angeles County in Tp. 4 N., R. 17 W., San Bernardino meridian, to a point in Tp. 7 N., R. 7 E., San Bernardino meridian, which is a line nearly east and west. The location of the Southern Pacific Railroad is made as the law requires from Tehachapi Pass to Los Angeles on a line directly north and south and the two lines cross at right angles

and are not on the same general route, and the land in controversy is not opposite a portion of the Southern Pacific Railroad, which is located upon the same general line as was proposed by the Atlantic & Pacific Railroad.

XXIV.

The respondent, the Southern Pacific Railroad Company, alleges that the land involved in this cause, viz: Sections 1, 11 and 13, Tp. 3 N., R. 15 W., S. B. M. and section 35, Tp. 4 N., R. 15 W., S. B. M., lies within twenty miles of a part of the Southern Pacific Railroad, located under the grant to said company by act of March 3, 1871, that was completed and accepted by the President of the United States under said law on the 2d day of March, 1877, and that section 35, Tp. 4 N., R. 15 W., S. B. M., were located by this respondent, the Southern Pacific Railroad Company, per List No. 31, of the Los Angeles land office, as part of its grant under said acts of Congress of March 3, 1871, and July 27, 1866, long before the institution of this suit, viz: on the 28th day of April, 1885, at the United States land office at Los Angeles; and that on the 17th day of April, 1885, the cost of surveying the plats on said list was paid into the Treasury of the United States according to the provisions of the act of Congress of July 31, 1876, 19 Stat., page 121, and on the 28th day of April, 1885, the location fees of the register and receiver were paid according to section 2238, Revised Statutes, and the said List No. 31, was transmitted by said officers to the commissioner of the general land office at Washington City, for a patent thereon to be issued to this respondent. On the 19th day of January,

1889, and prior to the institution of this suit, the estimated cost of writing and recording the patent on said list was paid into the Treasury of the United States and that by reason of the grant of lands made by Congress to the respondent and the location of the route of its road, and the full completion of the said road as provided by law, and by reason of the location of the lands in contest at the local land office, and the payments of fees and costs as above stated, the respondent, the Southern Pacific Railroad Company, had become, and was the owner of the tracts located as aforesaid, and was and is entitled to a patent therefor from the United States, and that the United States had not any title or interest in said tracts at the time of the institution of this suit. The respondent has fulfilled all the conditions of its grant and all the laws and the regulations of the Department of the Interior prescribed as requirements antecedent to obtaining a patent. The register and receiver at Los Angeles were authorized by law to issue, and did, on the 28th day of April, 1885, issue to the respondent, a patent certificate entitling the respondent to a patent of the United States for the lands described therein, and said certificate is now in full force and virtue. The respondent now produces and shows to the Court a copy of the same, certified by the commissioner of the general land office, and makes the same a part of this answer.

XXV.

The respondents deny that the lands described in the patent certificate issued April 28, 1885, by the register and receiver at Los Angeles, were excepted, reserved or ex-

cluded from the grant by Congress of lands to this respondent by the act above mentioned, approved March 3, 1871, and denies that they are still owned by the complainant in this suit, or that the respondents have not title or interest in or to said lands.

Respondents deny that they or either of them have unlawfully cut or destroyed or removed or are unlawfully cutting down, destroying or removing or threatening so to do, any trees, wood or lumber, and deny having unlawfully committed or intended unlawfully to commit any injury whatsoever to said tracts.

XXVI.

The respondents deny all and all manner of unlawful combination and conferred wherewith they are by the said bill charged, without this, that any other matter, cause or thing in the complainant's said bill of complaint, contained, material or necessary for these respondents to make answer unto, and not herein and hereby well and sufficiently answered, confessed, traversed, avoided or denied is true to the knowledge or belief of these respondents; all of which matters and things these respondents are ready and willing to aver, maintain and prove as this Honorable Court shall direct, and pray to be hence dismissed with their reasonable costs and charges in this behalf most wrongfully sustained.

JOSEPH D. REDDING,
Solicitor and of Counsel for Respondents.

CREED HAYMOND, R.,
Of Counsel for Respondents.

Exhibit "A."

Articles of Association, Amalgamation and Consolidation, made and executed on this the 11th day of October, A. D. 1870, by and between the San Francisco and San Jose Railroad Company, of tht first part, the Santa Clara and Pajaro Valley Railroad Company, of the second part, the Southern Pacific Railroad Company, of the third part, and the California Southern Railroad Company, of the fourth part, witnesseth:

That whereas, the said party of the first part was heretofore, to wit, on the 18th day of August, 1860, duly incorporated and organized under the laws of the State of California, for the purpose of constructing, owning, maintaining and operating a railroad from the city of San Francisco, in the county of San Francisco, in said state, through said county and the counties of San Mateo and Santa Clara, to the city of San Jose, in said last-named county, a distance of forty-eight miles.

And whereas, the said part of the second part, was heretofore, to wit, on the 2d day of January, 1868, duly incorporated and organized under the laws of said State for the purpose of constructing, owning, maintaining and operating a railroad from a point at or near the city of San Jose, in the county of Santa Clara and State aforesaid, connecting at said point with the railroad of the said party of the first part, and to pass thence to a point at or near the town of New Gilroy, in the same county, a distance of thirty miles. And whereas, the said party of the third part was heretofore to wit, on the 2d day of December, 1865, duly incorporated and organized under the

laws of said State, for the purpose of constructing, owning, maintaining and operating a railroad from some point on the Bay of San Francisco, in said State, and to pass through the counties of Santa Clara, Monterey, San Luis Obispo, Tulare, Kern, Los Angeles and San Diego, to the town of San Diego, in said State; thence eastward through the county of San Diego to the eastern boundary line of said State, a distance of seven hundred and twenty miles, as near as may be, there to connect with the contemplated railroad from said eastern boundary line of said State to the Mississippi River and has received large grants of land from the Government of the United States to aid in the construction and equipment of said road. And whereas, the said party of the fourth part was heretofore, to wit, on the 22d day of January, 1870, duly incorporated and organized under the laws of said State, for the purpose of constructing, owning and maintaining a railroad from a point at or near the town of Gilroy, in the county of Santa Clara in said State, and to pass through the counties of Santa Clara, Santa Cruz and Monterey to a point at or near the town of Salinas City, in said last-named county, a distance of forty-five miles, as near as may be.

And whereas, said parties believe a consolidation and amalgamation of their capital stocks, debts, properties, assets, roads, telegraphs, lands and franchises will be mutually advantageous.

And whereas, more than three-fourths in value of all the stockholders in the interest of each of said parties have consented, in writing, to such amalgamation and

consolidation upon the terms and conditions hereinafter set forth.

Now, therefore, under and by virtue of the statutes of the State of California, in such cases made and provided, the said parties do hereby mutually covenant and agree, each with each, and all the others, to the following articles, to wit:

Article 1. Said parties do hereby amalgamate and consolidate themselves into a new corporation under the name and style of the Southern Pacific Railroad Company, which new corporation shall continue in existence for a period of fifty years from the date of these articles; and they do further consolidate and amalgamate their several capital stocks, debts, properties, assets, roads, telegraphs, lands, franchises, rights, titles, privileges, claims and demands of every kind whatsoever as well in possession as in expectancy, at law or in equity, and do grant, convey and vest the same in said new corporation, as fully as the same are now severally held and enjoyed by them, or either of them, subject, however, to all conditions, obligations, stipulations, contracts, agreements, liens, mortgages, encumbrances, claims and charges thereon, or in any wise affecting the same.

Article 2. The object and purpose of said new corporation shall be to purchase, construct, own, maintain and operate a continuous line of railroad from the city of San Francisco, in the State of California, through the city and county of San Francisco, the counties of San Mateo, Santa Clara, Monterey, Fresno, Tulare, Kern,

San Bernardino and San Diego, to some point on the Colorado river in the southeastern part of the State of California, a distance of seven hundred and twenty miles, as near as may be, also a line of railroad from a point at or near Tehachapi Pass, by way of Los Angeles, to the Texas Pacific Railroad, at or near the Colorado river, a distance of three hundred and twenty-four miles, as near as may be; also a line of railroad from the town of Gilroy in the county of Santa Clara, in said State, passing through said county, and the counties of Santa Cruz and Monterey to a point at or near Salinas City, in said last-named county, a distance of forty-five miles, as near as may be; also such branches to said lines as the board of directors of said new corporation may hereafter consider advantageous to said corporation and direct to be established.

Article 3. The board of directors of said new corporation, shall consist of seven persons; and the following named persons shall act as such directors until their successors shall have been duly elected, pursuant to the by-laws of said new corporation, hereafter to be adopted, viz: Lloyd Tevis, Leland Stanford, Charles Crocker, C. P. Huntington, Mark Hopkins, Charles Mayne and Peter Donahue.

Article 4. The capital stock of said new corporation shall be seventy million dollars, consisting of seven hundred thousand shares, of one hundred dollars each, that sum being the contemplated actual cost of said railroads, including telegraph lines, rolling stock, motive power, shops, depots, etc.

Article 5. Each stockholder of each of said parties shall have the same number of shares of the capital stock of the new corporation which he now owns and holds of the capital stock of his respective company, upon the same terms and conditions, and shall be entitled to receive from said new corporation, certificates therefor, where the same has been fully paid up, upon the surrender of the certificates now held by him; and where the same has not been fully paid up, he shall receive such other evidence of his ownership as the board of directors of said new corporation shall direct, upon the surrender of such evidence of his ownership of such unpaid stock of his respective company as he may now hold.

Article 6. Said new corporation shall assume and perform all the contracts, agreements, covenants, duties and obligations of what kind soever, of each of said parties, and shall pay and discharge all debts, claims and demands existing against either and all of said parties; but nothing herein contained shall release the said parties or either of them, or their stockholders, or any of them, from any of their just liabilities.

In testimony whereof, the said Southern Pacific Railroad Company by its board of directors, has caused these articles to be signed and countersigned by its president and secretary and its corporate seal to be hereunto affixed on this the eleventh (11th) day of April, 1871.

SOUTHERN PACIFIC RAILROAD COMPANY,
By CHARLES CROCKER,
President.

[Seal] J. L. WILLCUTT,
Secretary.

[Endorsed]: No. 177. Circuit Court of the United States, Ninth Circuit, Southern District of California. United States of America vs. Southern Pacific Railroad Company et al. Answer. Service accepted Aug. 4, 1890, J. H. Call, Spec. Asst. U. S. Atty. Filed August 4th, 1890. Wm. M. Van Dyke, Clerk. Joseph D. Redding, Solicitor for Respondents, No. 37 Chronicle Bldg., San Francisco, Cal.

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this replicant; without this, that any other matter or thing whatsover in the said answer contained, material or effectual in the law to be replied unto, confessed and avoided, traversed or denied, is true; all which matters and things this replicant is, and will be, ready to aver and prove, as this Honorable Court shall direct; and humbly prays, as in and by its said bill it hath already prayed.

JOSEPH H. CALL,

Special Assistant United States Attorney, Southern District of California.

[Endorsed]: No. 177. Circuit Court of the United States, Ninth Circuit, Southern District of Cal. The United States of America, Complainant, vs. The Southern Pacific R. R. Co., D. O. Mills & Gerrit L. Lansing, Trustees, and the City Brick Co., Thomas Goss, Edward Simmons and Albert A. Hubbard, Respondents. Replication. Served on J. D. Redding, Solicitor for Defendants, Aug. 6, 1890, by mail. J. H. Call, Sol. for Plff. Filed August 6th, 1890. Wm. M. Van Dyke, Clerk. Joseph H. Call. Sol. for Plff.

UNITED STATES OF AMERICA.

Circuit Court of the United States, Ninth Judicial Circuit, Southern District of California.

IN EQUITY.

THE UNITED STATES OF AMERICA,

Complainant,

vs.

THE SOUTHERN PACIFIC RAILROAD COMPANY, D. O. MILLS and GARRIT L. LANSING, Trustees, and THE CITY BRICK COMPANY, THOMAS GOSS, EDWARD SIMMONS and ALBERT A. HUBBARD,

Defendants.

Final Decree.

This cause having heretofore been brought to a hearing upon the pleadings and proofs, and having been argued by Joseph H. Call, Esq., Special Assistant United States Attorney, for the Southern District of California, of counsel for the said complainants, and by Joseph D. Redding, Esq., counsel for said defendants, and having thereupon been submitted to the Court for its consideration and decision, and the Court, after due deliberation thereon, having ordered that the complainants' amended bill of complaint herein be dismissed without costs.

It is therefore ordered, adjudged and decreed that the said amended bill of complaint of the said complainants,

The United States of America, be and the same is hereby dismissed without costs.

Los Angeles, June 22d, 1891.

ROSS,
District Judge.

Decree entered and recorded June 22d, 1891.

WM. M. VAN DYKE,
Clerk.

[Endorsed]: No. 177. U. S. Circuit Court. So. Dist. of California. The United States of America, Complainants, vs. The Southern Pacific Railroad Company et al., Defendants. Final Decree. Filed June 22d, 1891. WM. M. Van Dyke, Clerk.

Mandate.

UNITED STATES OF AMERICA—ss.

The President of the United States of America, to the Honorable the Judges of the Circuit Court

[Seal] of the United States for the Southern District of California, Greeting:

Whereas, lately in the Circuit Court of the United States for the Southern District of California, before you, or some of you, in a cause between The United States of America, complainant, and The Southern Pacific Railroad Company, D. O. Mills and Gerrit L. Lansing, Trustees, and The City Brick Company, Thomas Goss, Edward Simmons and Albert A. Hubbard, Defendants, wherein the decree of the said Circuit Court entered in said cause on the 22d day of June, A. D. 1891, is in the following words, viz:

"This cause having heretofore been brought to a hearing upon the pleadings and proofs, and having been argued by Joseph H. Call, Esq., special assistant United States attorney for the Southern District of California, of counsel for the said complainants, and by Joseph D. Redding, Esq., counsel for said defendants, and having thereupon been submitted to the Court for its consideration and decision, and the Court after due deliberation thereon having ordered that the complainants' amended bill of complaint herein be dismissed, without costs—

It is therefore ordered, adjudged, and decreed that the said amended bill of complaint of the said complainants, The United States of America, be, and the same is hereby, dismissed without costs.

Los Angeles, June 22d, 1891.

ROSS,
District Judge.

Decree entered and recorded June 22d, 189[illegible]

WM. M. VAN [illegible]KE,
Clerk."

—as by the inspection of the transcript of the record of the said Circuit Court, which was brought into the Supreme Court of the United States by virtue of an appeal agreeably to the act of Congress, in such case made and provided, fully and at large appears.

And whereas, in the present term of October, in the year of our Lord, one thousand eight hundred and ninety-two, the said cause came on to be heard before the said Supreme Court, on the said transcript of record, and was argued by counsel:

On consideration whereof, it is now here ordered, adjudged, and decreed by this Court that the decree of the said Circuit Court in this cause be, and the same is hereby, reversed.

And it is further ordered that this cause be, and the same is hereby, remanded to the said Circuit Court with directions to enter a decree in favor of the plaintiff for the relief sought.

December 12, 1892.

You, therefore, are hereby commanded that such further proceedings be had in said cause, in conformity with the opinion and decree of this Court, as according to right and justice, and the laws of the United States, ought to be had, the said appeal notwithstanding.

Witness the Honorable MELVILLE W. FULLER, Chief Justice of the United States, the 23d day of March, in the year of our Lord one thousand eight hundred and ninety-three.

JAMES H. McKENNEY,

Clerk of the Supreme Court of the United States.

[Endorsed]: Supreme Court of the United States. No. 922, October Term, 1892. The United States vs. The Southern Pacific Railroad Co., et al. Mandate. Filed Apr. 4, 1893. Wm. M. Van Dyke, Clerk.

In the United States Circuit Court, Southern District of California, Ninth Circuit.

UNITED STATES OF AMERICA,
Complainant,

vs.

THE SOUTHERN PACIFIC RAILROAD COMPANY (a Corporation), D. O. MILLS and GARRIT L. LANSING, Trustees, and THE CITY BRICK COMPANY, THOMAS GOSS, EDWARD SIMMONS and ALBERT A. HUBBARD,
Defendants.

No. 177.

Decree.

This cause came on to be further heard at this term and was argued by counsel; and thereupon, upon consideration thereof, and pursuant to the mandate of the Supreme Court heretofore entered of record herein,

It is ordered, adjudged and decreed that the United States is the owner by absolute title in fee simple of the following described lands, to wit: all of sections one (1), eleven (11) and thirteen (13), township three (3) north, range fifteen (15) west, and all of section thirty-five (35), township four (4) north, range fifteen (15) west, San Bernardino base and meridian, California; and that the defendants herein and each of them be and hereby are forever enjoined from asserting or claiming any right or title to said lands adverse to the plaintiff herein; and said defendants, and each of them and their agents, be

and hereby are forever enjoined from cutting any trees or wood upon said lands, and from in any way injuring the trees growing thereon, and from removing or causing to be removed from said land, any wood now cut thereon, or hereafter cut thereon.

And it is further ordered, adjudged and decreed that the United States have and recover their proper costs to be taxed. Costs $1244.05.

ROSS,
Dist. Judge.

Decree entered and recorded April 27th, 1893.

WM. M. VAN DYKE,
Clerk.

[Endorsed]: No. 177. In the United States Circuit Court, Southern District of California. United States vs. Southern Pacific Railroad Co., et al. Decree. Filed Apr. 27, 1893. Wm. M. Van Dyke, Clerk. Joseph H. Call, Special Ass't. U. S. Att'y.

Clerk's Certificate.

I, Wm. M. Van Dyke, Clerk of the Circuit Court of the United States, for the Southern District of California, do hereby certify the foregoing 50 typewritten pages, numbered from 1 to 50, both inclusive, to be a full, true and correct copy of the following parts of the record in the cause entitled The United States of America, Complainants, vs. Southern Pacific Railroad Company, et al., No. 177, viz: Amended bill of complaint, filed April 15, 1890; answer to same, filed August 6th, 1890; replication, filed August 6th, 1890; decree, filed June 22d, 1891; mandate of Supreme Court, filed April 4th, 1898, and final

decree filed April 27th, 1893, as the same appear on file and of record in my office in said cause.

Attest my hand and the seal of said Circuit Court, this 19th day of March, A. D. 1900.

[Seal] WM. M. VAN DYKE,
Clerk.

[Endorsed]: No. 177. U. S. Circuit Court, Ninth Circuit, Southern District of California. United States of America, vs. Southern Pacific Railroad Company et al. Certified copy of parts of record.

Plaintiff's Exhibit "G."

In the Circuit Court of the United States, Ninth Circuit, Southern District of California.

THE UNITED STATES OF AMERICA,
Plaintiffs,
vs.
THE SOUTHERN PACIFIC RAILROAD COMPANY, D. O. MILLS and GERRIT L. LANSING, Trustees, and the CENTRAL TRUST COMPANY of NEW YORK,
Defendants.
No. 600.

Joint and Several Supplemental Answer of Southern Pacific R. R. Co.

The joint and several supplemental answer of the defendants, the Southern Pacific Railroad Company, D. O. Mills, Trustee, and the Central Trust Company of New

York, filed by leave of the Court, to the plaintiffs' bill of complaint as amended.

These defendants, the Southern Pacific Railroad Company, D. O. Mills, Trustee, and the Central Trust Company of New York, respectively, by leave of the Court, file this their joint and several answer to the plaintiffs' bill of complaint as amended and say:

1st. That on February 4th, 1896, and since the answer of the defendants was filed, the defendant, Gerrit L. Lansing died, and on March 21st, 1896, one Homer S. King was duly substituted for the said Lansing, as a trustee under the mortgage set forth in subdivision XII of the defendants' answer herein.

2d. Prior to the time plaintiffs' bill of complaint was filed, the United States duly issued its patents conveying to the defendant, Southern Pacific Railroad Company, the legal title to certain of the lands described in the plaintiff's bill of complaint; and since the said bill was filed the United States duly issued its patents conveying to the said company the legal title to certain other lands described in the said bill of complaint which other lands contain thirty-nine thousand, nine hundred and forty-four acres.

All the lands so patented are within the limits of the land grants made to the defendant, the Southern Pacific Railroad Company, by the acts of Congress set forth in the defendants' original answer, and none of the said lands were, or are, excepted from the said grants by any cause; and all of those lands were granted to the said company by the acts of Congress mentioned. Before the said patents, or any of them, issued, the said company

duly selected the lands in such patent described, under the direction of the Secretary of the Interior, and paid all the costs of selecting, surveying and patenting the the same; and the said company was in all respects entitled thereto, at the time the said patents were respectively, issued. Each of the said patents issued in proper form, after the commissioner of the general land office and the Secretary of the Interior had duly examined, ascertained and adjudged that the lands therein described constituted and were part and parcel of the land grant made by the said acts, not included by any exception thereto, and after the said officers had duly examined, ascertained and adjudged that such lands had been duly selected by the said company, that all costs of selecting, surveying and patenting had been paid, and that the said company was fully entitled to the issue of such patent; and each of the said patents was so issued in pursuance of the order and direction of the Secretary of the Interior and the President of the United States. Some of the said lands are within the primary limits, and the remainder thereof are within the indemnity limits, of the said land grants to the Southern Pacific Railroad Company.

Before this suit was commenced, or demand made for reconveyance to the United States of any of the lands patented as aforesaid, the defendant Southern Pacific Railroad Company sold, and issued contracts and deeds of conveyance for, fifty-seven thousand seven hundred and eleven acres of the lands conveyed to it by the said patents; the full particulars of which sales, contracts and deeds, and short particulars of the patents conveying to the said company the lands so sold, are set forth in Exhibit "A,"

attached to and made a part of this supplemental answer. Such sales were made, and contracts and deeds issued to bona fide purchasers, each of whom purchased in good faith, for a valuable consideration paid without notice or knowledge that the United States had or claimed to have, any right, title or interest in or to the lands so purchased, or any part thereof; and each of the said purchasers believed, sincerely and in good faith, that in making such purchase he was acquiring the perfect and true title to the lands purchased. All of the lands shown on Exhibit "A," hereto attached, to have been sold, or contracted for sale are, at the time this suit was brought and on March 2d, 1896, were, held by bona fide purchasers.

By its act approved March 2d, 1896, entitled "An act to provide for the extension of the time within which suits may be brought to annul land patents, and for other purposes," Congress provided that no patent to any land held by a bona fide purchaser should be vacated or annulled, and confirmed the right and title conveyed by such patents; and these defendants are advised and believe, and so say, that if it were in anywise true (which it is not) that the lands patented and sold as aforesaid were reserved from the lands granted to the defendant Southern Pacific Railroad Company by the said act of Congress, as in the plaintiff's bill of complaint alleged, still this suit cannot be maintained, but is barred as to all such patented and sold lands by the provision of the first section of the said act of March 2d, 1896.

3d. Prior to the commencement of this suit the plaintiffs demanded of it, and the defendant Southern Pacific

Railroad Company paid to the plaintiffs, the sum of three thousand five hundred dollars for the cost of surveying and patenting the said lands patented to it as aforesaid; which sum the plaintiffs have retained and appropriated, and they have not at any time requested a reconveyance to the United States of any of the said patented lands.

Wherefore, the defendants pray as in their original answer herein; and that this suit be abated as to all the lands described in Exhibit "A," attached hereto, and for general relief in respect of the matters herein set forth.

WM. SINGER, Jr.,
Attorney for the said Defendants.

WM. F. HERRIN,
Counsel for the said Defendants.

State of California,
City and County of San Francisco. } ss.

H. E. Huntington, being duly sworn, deposes and says: that he is the vice-president of the Southern Pacific Railroad Company, one of the defendants named in the foregoing supplemental answer; that the said supplemental answer is true of his own knowledge, except as to the matters and things therein stated on information or belief, and as to such matters that he believes it to be true.

H. E. HUNTINGTON.

Sworn to and subscribed before me, July 14th, 1896.

[Seal] E. B. RYAN,
Notary Public.

Contract No. 2418.

Issued Sept. 23d, 1882, to Geo. Chaffey, Jr., and W. B. Chaffey, for the fractional NE. ¼ of Sec. 5, T. 1 S., R. 6 W., S. B. M., containing 167 acres. Agreed pur. price, $———. Pur. price paid, $584.50. Int. paid, $———. Deed issued Oct. 5th, 1882, to Geo. Chaffey, Jr., and W. B. Chaffey. Present owner of contract,———. Patent No. 2. Issued April 4th, 1879, for the land described above.

Contract No. 2627.

Issued Dec. 20th, 1882, to Geo. Chaffey, Jr., and W. B. Chaffey, for the NW. ¼ of Sec. 9, T. 1 S., R. 6 W., S. B. M., containing 160 acres. Agreed pur. price, $———. Pur. price paid, $753.06. Int. paid, $———. Deed issued July 18th 1887, to Geo. Chaffey, Jr., and W. B. Chaffey, Present owner of contract, ———. Patent No. 2. Issued April 4th, 1879, for the land described above.

Contract No. 2338.

Issued June 30th, 1882, to M. L. Wicks, for the N. ½ of Sec. 21, T. 1 S., R. 7 W., S .B. M., containing 320 acres. Agreed pur. price, $———. Pur. price paid, $1,797.45. Int. paid, $———. Deed issued Aug. 8th, 1887, to Pomona Land and Water Co. Present owner of contract. ———. Patent No. 2. Issued April 4th, 1879, for the land described above.

Contract No. 2319.

Issued May 18th, 1882, to M. L. Wicks, for the S. ½ of Sec. 21, T. 1 S., R. 7 W., S. B. M., containing 320 acres. Agreed pur. price, $———. Pur. price paid, $1,749.74. Int. paid, $———. Deed issued Nov. 18th, 1886, to Po-

mona Land and Water Co. Present owner of contract, ———. Patent No. 2. Issued April 4th, 1879, for the land described above.

Contract No. 2606.

Issued Dec. 2d, 1882, to Mrs. E. H. Baker, for the E ½ of NE. ¼ and E. ½ of SE. ¼ of Sec. 1, T. 1 S., R. 8 W., S. B. M., containing 160.04 acres. Agreed pur. price, $——— Pur. price paid, $443.62. Int. paid, $——— .Deed issued Dec. 12th, 1883, to Henry B. Botsford. Present owner of contract, ———. Patent No. 2. Issued April 4th, 1879, for the land described above.

Contract No. 2976.

Issued Dec. 26th, 1883, to C. T. Mills, for the W. ½ of NE. ¼, W. ½ of SE. ¼ and W. ½ of Sec. 1, T. 1 S., R. 8 W., S. B. M., containing 480.56 acres. Agreed pur. price, $———. Pur. price paid, $1,737.10. Int. paid, $———. Deed issued Aug. 7th, 1888, to Pomona Land and Water Co. Present owner of contract, ———. Patent No. 2. Issued April 4th, 1879, for the land described above.

Contract No. 2338.

Issued June 30th, 1882, to M. L. Wicks, for all of Sec. 11, T. 1 S., R. 8 W., S. B. M., containing 640 acres. Agreed pur. price, $———. Pur. price paid, $2156.92. Int. paid, $———. Deed issued Aug. 8th, 1887, to Pomona Land and Water Co. Present owner of contract, ———. Patent No. 2. Issued April 4th, 1879, for the land described above.

Contract No. 2319.

Issued May 18th, 1882, to M. L. Wicks, for all of

fractional Sec. 15, T. 1 S., R. 8 W., S. B. M., containing 416 acres. Agreed pur. price, $———. Pur. Price paid, $1364.80. Int. paid, $———. Deed issued Nov. 18th, 1886, to Pomona Land and Water Co. Present owner of contract, ————. Patent No. 2. Issued April 4th, 1879, for the land described above.

Contract No. 2305.

Issued May 4th, 1882. To M. L. Wicks, for Lots 1 and 2 of Sec. 21, T. 1 S., R. 8 W., S. B. M., containing 32.10 acres. Agreed pur. price, $———. Pur. price paid, $207.45. Int. paid, $———. Deed issued Aug. 8th, 1887, to Pomona Land and Water Co. Present owner of contract, ————. Patent No. 2. Issued April 4th, 1879, for the land described above.

Contract No. 2319.

Issued May 18th, 1882, to M. L. Wicks, for the N. ½ of NE. ¼ of Sec. 23, T. 1 S., R. 8 W., S. B. M., containing 80.00 acres. Agreed pur. price, $———. Pur. price paid, $499.93. Int. paid, $———. Deed issued Nov. 18th, 1886, to Pomona Land and Water Co. Present owner of contract, ————. Patent No. 2. Issued April 4th, 1879, for the land described above.

Contract No. 2305.

Issued May 4th, 1882, to M. L. Wicks, for Lots 1, 2, 3 and 4 of Sec. 25, T. 1 S., R. 8 W., S. B. M., containing 138 34-100 acres. Agreed pur. price, $———. Pur. price paid, $670.55. Int. paid, $———. Deed issued Aug. 8th, 1887, to Pomona Land and Water Co. Pres-

ent owner of contract. Patent No. 2. Issued April 4th, 1879, for the land described above.

Contract No. 2305.

Issued May 4th, 1882, to M. L. Wicks, for the S. ½ of SE. ¼ and S. ½ of SW. ¼ of Sec. 27, T. 1 S., R. 8 W., S. B. M., containing 160.00 acres. Agreed pur. price, ———. Pur. price paid, $775.56. Int. paid, $———. Deed issued Aug. 8th, 1887, to Pomona Land and Water Co. Present owner of contract, ————. Patent No. 2. Issued April 4th, 1879, for the land described above.

Contract No. 3083.

Issued Jan. 24th, 1884, to C. M. Wright, for Lots 6 and 7 of Sec. 33, T. 1 S., R. 9 W., S. B. M., containing 48 16-100 acres. Agreed pur. price, $———. Pur. price paid, $624.32. Int. paid, $———. Deed issued May 17th, 1889, to C. M. Wright. Present owner of contract, ————. Patent No. 2. Issued April 4th, 1879, for the land described above.

Contract No. 3082.

Issued Jan. 24th, 1884, to D. H. Collins, for Lot 5 of Sec. 33, T. 1 S., R. 9 W., S. B. M., containing 31 79-100 acres. Agreed pur. price, $1641.50. Pur. price paid, $205.98. Int. paid, $735.36. Deed issued ——— to ———. Present owner of contract, ————. Patent No. 2. Issued April 4th, 1879, for the land described above.

Contract No. 3435.

Issued April 17th, 1884, to J. M. Griffith, for the S. ½ of SW. ¼ and Lots 1, 2, 3, and 4, of Sec. 35, T. 1 S., R.

9 W., containing 176 acres. Agreed pur. price, $———. Pur. price paid, $1129.30. Int. paid, $———. Deed issued May 17th, to C. M. Wright and Jane Lynch. Present owner of contract, ———. Patent No. 2. Issued April 14th, 1879, for the land described above.

Contract No. 9141.

Issued Jan. 5th, 1888, to R. W. Morse, for Lot 1 of Sec. 1, T. 1 S., R. 11 W., S. B. M., containing 14.97-100 acres. Agreed pur. price, $——— Pur. price paid, $74.85. Int. paid, $———. Deed issued Feb. 1st, 1888, to R. W. Morse. Present owner of contract, ———. Patent No 1. Issued March 29th, 1876, for the land described above.

Contract No. 2538.

Issued Oct. 30th, 1882, to L. J. Rose, for Lot 1 of NW. ¼ of Sec. 7, T. 1 S., R. 11 W., S. B. M., containing 40 acres. Agreed pur. price, $———. Pur. price paid, $1400. Int. paid, $———. Deed issued Nov. 8th, 1882, to L. J. Rose. Present owner of contract,———. Patent No. 4. Issued June 26th, 1882, for the land described above.

Contract No. 2640.

Issued Jan. 8th, 1883, to T. W. Corder, for Lot 5 of SE. ¼ of Sec. 7, T. 1 S., R. 11 W., S. B. M., containing 10.83-100 acres. Agreed pur. price, $——— Pur. price paid, $216.60. Int. paid, $———. Deed issued Jan. 9th, 1883, to T. W. Corder. Present owner of contract, ———. Patent No. 2. Issued April 4th, 1879, for the land described above.

Contract No. 2509.

Issued Oct. 24th, 1882, to Thomas Pollard, for Lot 6 of SE. ¼ of Sec. 7, T. 1 S., R. 11 W., S. B. M., containing 10.65-100 acres. Agreed pur. price, $———. Pur. price paid, $213. Int. paid, $———. Deed issued Oct. 27th, 1882, to Thomas Pollard. Present owner of contract, ———. Patent No. 2. Issued April 4th, 1879, for the land described above.

Contract No. 1638.

Issued Nov. 2d, 1881, to Thomas Pollard, for Lots 7 and 8 of NE. ¼ of Sec. 7, T. 1 S., R. 11 W., S. B. M., containing 20 76-10 acres. Agreed pur. price, $———. Pur. price paid, $415.20. Int. paid, $———. Deed issued Nov. 28th, 1881, to Thomas Pollard. Present owner of contract, ———. Patent No. 2. Issued Apl. 4th, 1879, for the land described above.

Contract No. 2062.

Issued Jan. 23d, 1882, to Austin Brown, for the E ½ of NE. ¼ and Lot 6 of Sec. 13, T. 1 S., R. 11 W., S. B. M., containing 107.86-100 acres. Agreed pur. price, $———. Pur. price paid, $414.19. Int. paid, $———. Deed issued Nov. 26th, 1884, to Austin Brown. Present owner of contract, ———. Patent No. 1. Issued March 29th, 1876, for the land described above.

Contract No. 2930.

Issued Dec. 10th, 1883, to Milton Santee, for the W. ½ of NE. ¼, E. ½ of NW. ¼, N. ½ of SW. ¼, and Lots 1, 2, 3, 4 and 5 of Sec. 13, T. 1 S., R. 11 W., S. B. M., containing 373.68-100 acres. Agreed pur. price, $———. Pur.

price paid, $1,196.46. Int. paid, $———. Deed issued Dec. 20th, 1888, to Homer Santee. Present owner of contract, ———. Patent No. 1. Issued Mch. 29th, 1876, for the land described above.

Contract No. 545.

Issued April 16th, 1877, to Solomon Richardson, for Lot 1 of Sec. 3, T. 1 S., R. 12 W., S. B. M., containing 17.31-100 acres. Agreed pur. price, $———. Pur. price paid, $432.75. Int. paid, $———. Deed issued Apl. 21st, 1877, to Solomon Richardson. Present owner of contract, ———. Patent No. 1. Issued Mch. 29th, 1876, for the land described above.

Contract No. 544.

Issued March 28th, 1877, to B. D. Wilson, for Lot 5 of Sec. 3, T. 1 S., R. 12 W., S. B. M., containing 2.45-100 acres. Agreed pur. price, $———. Pur. price paid, $97.00. Int. paid, $———. Deed issued Mch. 29th, 1877, to B. D. Wilson. Present owner of contract, ———. Patent No. 1. Issued Mch. 29th, 1876, for the land described above.

Contract No. 3812.

Issued July 17th, 1884, to P. Wilhelm Poulson, for Lots 2 and 3 of Sec. 5, T. 1 S., R. 12 W., S. B. M., containing 6.87-100 acres. Agreed pur. price, $———. Pur. price paid, $20.61. Int. paid, $———. Deed issued July 17th, 1884, to P. Wilhelm Poulson. Present owner of contract, ———. Patent No. 2. Issued Apl. 4th, 1879, for the land described above.

Contract No. 748.

Issued Sept. 30th, 1879, to Hancock M. Johnston, for the NE. ¼ of Sec. 7, T. 1 S., R. 12 W., S. B. M., containing 160 acres. Agreed pur. price, $———. Pur price paid, $660.80. Int. paid, $———. Deed issued July 11th, 1884, to Hancock M. Johnston. Present owner of contract, ———. Patent No. 2. Issued April 4th, 1879, for the land described above.

Contract No. 470.

Issued Dec. 8th, 1876, to Hancock M. Johnston, for NE. ¼ of SW. ¼ of Sec. 7, T. 1 S., R. 12 W., S. B. M., containing 40 acres. Agreed pur. price, $———. Pur. price paid, $194.88. Int. paid, $———. Deed issued July 10th, 1883, to Hancock M. Johnston. Present owner of contract, ———. Patent No. 1. Issued Mch. 29th, 1876, for the land described above.

Contract No. 2584.

Issued Nov. 18th, 1882, to H. M. Johnston, for Lots 3 and 4 of Sec. 7, T. 1 S., R. 12 W., S. B. M., containing 83.16-100 acres. Agreed pur, price, $———. Pur. price paid, $543.20. Int. paid, $———. Deed issued June 24th, 1884, to H. M. Johnston. Present owner of contract, ———. Patent No. 4. Issued June 26th, 1882, for the land described above.

Contract No. 882.

Issued Oct. 14th, 1880, to Mrs. Alice V. Slosson, for Lots 1 and 2 of Sec. 11, T. 1 S., R. 12 W., S. B. M., containing 34.40-100 acres. Agreed pur, price, $———. Pur. price paid, $864.00. Int. paid, $———. Deed issued Nov. 23d,

1880, to Mrs. Alice V. Slosson. Present owner of contract, ———. Patent No. 2. Issued April 4th, 1879, for Lot 1. Patent No. 1. Issued March 29th, 1876, for Lot 2, of land described above.

Contract No. 716.

Issued June 24th, 1879, to Maria Jesus de Shorb, Annie Wilson and Ruth Wilson, for the NW. ¼ of NW. ¼ of Sec. 11, T. 1 S., R. 12 W., S. B. M., containing 40 acres. Agreed pur. price, $———. Pur. price paid, $787.00. Int. paid, $———. Deed issued June 25th, 1879, to Maria Jesus de Shorb, Annie Wilson and Ruth Wilson. Present owner of contract, ———. Patent No. 2. Issued April 4th, 1879, for the land described above.

Contract No. 810.

Issued May 17th, 1880, to David F. Hall, and Henry Hamilton, Trustee, for the SE. ¼ of NW. ¼, and NE. ¼ of SW. ¼ of Sec, 11, T. 1 S., R. 12 W., S. B. M., containing 80 acres. Agreed pur. price, $———. Pur. price paid, $800.00. Int. paid, $———. Deed issued May 17th, 1880, to David F. Hall, and Henry Hamilton, Trustee. Supplemental Deed issued June 16th, 1880, to David F. Hall and Henry Hamilton, Trustee. Present owner of contract, ———. Patent No. 1. Issued Mch. 29th, 1876, for the land described above.

Contract No. 2431.

Issued Oct. 4th, 1882, to Solomon Richardson, for the E. ½ of NE. ¼ of Sec. 13, T. 1 S., R. 12 W., S. B. M., containing 80.00 acres. Agreed pur. price, $———. Pur. price paid, $2,496.32. Int. paid, $———. Deed issued

July 10th, 1883, to Solomon Richardson. Present owner of contract, ————. Patent No. 2. Issued April 4th, 1879, for the land described above.

Contract No. 543.

Issued March 23d, 1877, to J. de Barth Shorb, for the NE. ¼ of Sec. 15, T. 1 S., R. 12 W., S. B. M., containing 160.00 acres. Agreed pur. price, $———. Pur. price paid, $5,600.00. Int. paid, $———. Deed issued Mch. 28th, 1882, to The Lake Vineyard Land and Water Association. Present owner of contract, ————. Patent No. 1. Issued Mch. 29th, 1876, for the land described above.

Contract No. 504.

Issued Jan. 9th, 1877, to Catalina Batz, for the SE. ¼ of SE. ¼ and NE. ¼ of Sec. 17, T. 1 S., R. 12 W., S. B. M., containing 200 acres. Agreed pur. price, $———. Pur. price paid, $1,400.00. Int. paid, $———. Deed issued Jan. 26th, 1877, to Catalina Batz. Present owner of contract, ————. Patent No. 1. Issued March 29th, 1876. for the land described above.

Contract No. 506.

Issued Jan. 9th, 1877, to Catalina Batz, for the NE. ¼ of SE. ¼ of Sec. 17, T. 1 S., R. 12 W., S. B. M., containing 40 acres. Agreed pur. price, $———. Pur. price paid, $1.00. Int. paid, $———. Deed issued Jan. 10th, 1877, to Catalina Batz. Present owner of contract, ————. Patent No. 1. Issued March 29th 1876, for the land described above.

Contract No. 505.

Issued Jan. 9th, 1877, to Catalina Batz, for the N. ½ of SE. ¼ of Sec. 19, T. 1 S., R. 12 W., S. B. M., containing 80 acres. Agreed pur. price, $———. Pur. price paid, $560.00. Int. paid, $———. Deed issued Jan. 26th, 1877, to Catalina Batz. Present owner of contract, ———. Patent No. 1. Issued Mch. 29th, 1876, for the land described above.

Contract No. 804.

Issued April 16th 1880, to James R. Brown, for the NW. ¼ of NW. ¼ of Sec. 19, T. 1 S., R. 12 W., S. B. M., containing 42.87 acres. Agreed pur. price, $———. Pur. price paid, $264.08. Int. paid, $———. Deed issued June 12th, 1882, to James R. Brown. Present owner, ———. Patent No. 2. Issued April 4th, 1879, for the land described above.

Contract No 746.

Issued Sept. 26th, 1879, to Catalina Batz, for the NW. ¼ of SW. ¼ and N. ½ of Sec. 29, T. 1 S., R. 12 W., S. B. M., containing 360 acres. Agreed pur. price, $———. Pur. price paid, $1,710. Int. paid, $———. Deed issued Sept. 30th, 1879, to Catalina Batz. Present owner of contract, ———. Patent No. 2. Issued April 4th, 1879, for the land described above.

Contract No. 747.

Issued Sept. 26th, 1879, to Alexander Reppetto, for the SE. ¼ of Sec. 29, T. 1 S., R. 12 W., S. B. M., containing 160 acres. Agreed pur. price, $———. Pur. price paid,

$760. Int. paid, $———. Deed issued Sept. 30th, 1879, to Alexander Reppetto. Present owner of contract, ———. Patent No 2. Issued April 4th, 1879, for the land described above.

Contract No. 1508.

Issued Oct. 27th, 1881, to Jean Pedalaborde and Francisco S. Pedalaborde, for the E. ½ of NE. ¼, E. ½ of SE. ¼ and NW. ¼ of Sec. 31, T. 1 S., R. 12 W., S. B. M., containing 327.61 acres. Agreed pur. price, $———. Pur. price paid, $3,222. Int. paid, $———. Deed issued May 20th, 1884, to Jean Pedalaborde and Francisco Pedalaborde. Present owner of contract, ———. Patent No. 1. Issued Mch. 29th, 1876, for the land described above.

Contract No. 2975.

Issued Dec. 26th, 1883, to Milton Santee, for Lot 1 of Sec. 11, T. 1 S., R. 13 W., S. B. M., containing 19-100 acres. Agreed pur. price, $———. Pur. price paid, $9.00. Int. paid, $———. Deed issued Feb. 5th, 1884, to Milton Santee. Present owner of contract, ———. Patent No. 1. Issued Mch. 29th, 1876, for the land described above.

Contract No. 470.

Issued Dec. 8th, 1876, to Hancock M. Johnston, for the NE. ¼ of NE. ¼, SE. ¼ of SE. ¼, and Lots 1 and 4 of Sec. 13, T. 1 S., R. 13 W., S. B. M., containing 99.28 acres. Agreed pur. price, $———. Pur. price paid, $1,524.67. Int. paid, $———. Deed issued July 10th, 1883, to Hancock M. Johnston. Present owner of contract, ———.

Patent No. 1. Issued Mch. 29th, 1876, for the land described above.

Contract No. 2322.

Issued May 29th 1882, to James R. Brown, for Lots 3 and 4 of Sec. 25, T. 1 S., R. 13 W., S. B. M., containing 18.57 acres. Agreed pur. price, $———. Pur. price paid, $186.60. Int. paid, $———. Deed issued July 12th, 1882, to James R .Brown. Present owner of contract, ———. Patent No. 2. Issued April 4th, 1879, for the land described above.

Contract No. 3615.

Issued May 26th, 1884, to Charles Yoerger, for Lot 10 of Sec. 3, T. 1 S., R. 14 W., S. B. M., containing 40.66 acres. Agreed pur. price, $———. Pur. price paid, $237.54. Int. paid, $———. Deed issued June 20th, 1887, to Charles Yoerger. Present owner of contract, ———. Patent No. 6. Issued Dec. 27th, 1883, for the land described above.

Contract No. 3614.

Issued May 26th, 1884, to Ivar A. Weid, for the S. ½ of NE. ¼ of Sec. 3, T. 1 S., R. 14 W., S. B. M., containing 80 acres. Agreed pur. price, $——— Pur. price paid, $232.60. Int. paid, $———. Deed issued May 4th, 1887, to Ivar A. Weid. Present owner of contract, ———. Patent No. 6. Issued Dec. 27th, 1883, for the land described above.

Contract No. 507.

Issued Jan. 10th, 1877, to Ivar A. Weid, for the E. ½ of SE. ¼ and Lots 1 and 2 of Sec. 3, T. 1 S. R. 14 W., S. B. M.,

containing 124.53 acres. Agreed pur. price, $———. Pur. price paid, $563.04. Int. paid, $———. Deed issued Jan. 19th, 1884, to L. J. Rose. Present owner of contract, ———. Patent No. 1. Issued March 29th, 1876, for the land described above.

Contract No. 3625.

Issued May 26th, 1884, to N. K. S. O'Melveny and George Allen, for the SW. ¼ of NW. ¼ and Lots 3, 4, 5 and 7, of Sec. 3, T. 1 S., R. 14 W., S. B. M., containing 139.32 acres. Agreed pur. price, $———. Pur. price paid, $442.30. Int. paid, $———. Ded issued Mch. 26th, 1889, to John L. Plummer. Present owner of contract, ———. Patent No. 6. Issued Dec. 27th, 1883, for the land described above.

Contract No. 3617.

Issued May 26th, 1884, to M. L. Yager, for the E. ½ of SW. ¼, SW. ¼ of SW. ¼, E. ½ of NE. ¼ and SE. ¼ of Sec. 5, T. 1 S., R. 14 W., S. B. M., containing 360.18 acres. Agreed pur. price, $———. Pur. price paid, $1,149.55. Int. paid, $———. Deed issued May 9th, 1889, to M. L. Yager. Present owner of contract, ———. Patent No. 6. Issued Dec. 27th, 1883, for the land described above.

Contract No. 3616.

Issued May 26th, 1884, to Oliver Johnson, for the NW. ¼ of SW. ¼, W. ½ of NE. ¼ and NW. ¼ of Sec. 5, T. 1 S., R. 14 W., S. B. M., containing 280.36 acres. Agreed pur. price, $———. Pur. price paid, $897.15. Int. paid, $———. Deed issued June 3d, 1889, to Oliver Johnson.

Present owner of contract, ————. Patent No. 6. Issued Dec. 27th, 1883, for the land described above.

Contract No. 3619.

Issued May 26th, 1884, to W. H. Carlin, for the E. ½ of NE. ¼ of Sec. 7, T. 1 S., R. 14 W., S. B. M., containing 80 acres. Agreed pur. price, $————. Pur. price paid, $201.70. Int. paid, $————. Deed issued Aug. 1st, 1884, to W. H. Carlin. Present owner of contract,————. Patent No. 6. Issued Dec. 27th, 1883, for the land described above.

Contract No. 3618.

Issued May 26th, 1884, to George Cate, for the W. ½ of NE. ¼ of Sec. 7, T. S., R. 14 W., S. B. M., containing 80 acres. Agreed pur. price, $————, Pur. price paid, $244.80. Int. Paid, $————. Deed issued July 16th, 1888, to F. B. Alderson. Present owner of contract, ————. Patent No. 6. Issued Dec. 27th, 1883, for the land described above.

Contract No. 3624.

Issued May 26th, 1884, to Wm. W. White, for the NW. ¼ of Sec. 7, T. 1 S., R. 14 W., S. B. M., containing 160.44-100 acres. Agreed pur. price, $————. Pur. price paid, $338.85. Int. paid, $——. Deed issued June 5th, 1885, to Wm. W. White. Present owner of contract,————. Patent No. 6. Issued Dec. 27th, 1883, for the land described above.

Contract No. 481.

Issued Dec. 26th, 1876, to George Cate, for the N. ½ of SE. ¼ and Lot 3 of Sec. 7, T. S., R. 14 W., S. B. M., con-

taining113.33-100 acres. Agreed pur. price, $———. Pur. price paid, $949.41. Int paid, $———. Deed issued Jan. 7th, 1882, to George Cate. Present owner of contract, ———. Patent No. 1. Issued Mch. 29th, 1876, for the land described above.

Contract No. 508.

Issued Jan. 11th, 1877, to Melbourne W. Sinnott. For the SW. ¼ of SE. ¼ of Sec. 7, T. 1 S., R. 14 W., S. B. M., containing 40 acres. Agreed pur. price, $———. Pur. price paid, $327.47. Int. paid, $———. Deed issued Aug. 2d, 1881, to Melbourne W. Sinnott. Present owner of contract, ———. Patent No. 1. Issued Mch. 29th, 1876, for the land described above.

Contract No. 491.

Issued Jan. 29th, 1877, to Ivar A. Weid, for NW. ¼ of NW. ¼ of Sec. 11, T. 1 S., R. 14 W., S. B. M., containing 40 acres. Agreed pur. price, $———. Pur. price paid, $160. Int. paid, $———. Deed issued Jan. 3d, 1877, to Ivar A. Weid. Present owner of contract. ———. Patent No. 1. Issued Mch. 29th, 1876, for the land described above.

Contract No. 492.

Issued Jan. 2d, 1877, to Wm. H. Hill. For the E. ½ of SE. ¼ of Sec. 11, T. 1 S., R. 14 W., S. B. M., containing 80 acres. Agreed pur. price, $———. Pur. price paid, $1,118.15. Int. paid, $———. Deed issued Dec. 24th, 1881, to Jennie E. Hill. Present owner of contract, ———. Patent No. 1. Issued March 29th, 1876, for the land described above.

Contract No. 482.

Issued Dec. 26th, 1876, to James M. Sutton, for the W. ½ of SE. ¼ of Sec. 11, T. 1 S., R. 14 W., S. B. M., containing 80 acres. Agreed pur. price, $———. Pur. price paid, $1,109.35. Int. paid, $———. Deed issued Oct. 26th, 1881, to James M. Sutton. Present owner of contract, ———. Patent No. 1. Issued Mch. 29th, 1876, for the land described above.

Contract No. 529.

Issued Feb. 19th, 1877, to Joseph M. Sherburne, for Lots 1, 2, 3 and 4 of Sec. 23, T. 1 S., R. 14 W., S. B. M., containing 51.12-100 acres. Agreed pur. price, $———. Pur. price paid, $613.44. Int. paid, $———. Deed issued Feb. 23d, 1877, to Joseph M. Sherburne. Present owner of contract, ———. Patent No. 1. Issued Mch. 29th, 1876, for the land described above.

Contract No. 1670.

Issued Nov. 9th, 1881, to Germain Pellisnier, for the NW. ¼ of Sec. 25, T. 1 S., R. 14 W., S. B. M, containing 160 acres. Agreed pur. price, $———. Pur. price paid, $3603.20. Int. paid, $———. Deed issued June 24th, 1884, to Germain Pellisnier. Present owner of contract, ———Patent No. 2. Issued April 4th, 1879, for the land described above.

Contract No. 3621.

Issued May 26th, 1884, to James Mair, for Lot 1, SE. ¼ of NE. ¼, N. ½ of SE ¼, SE. ¼ of SE. ¼ and E. ½ of SW. ¼ of Sec. 1, T. 1 S., R. 15 W., S. B. M., containing

280 acres. Agreed pur. price, $———. Pur. price paid, $660. Int. paid, $———. Deed issued May 28th, 188-, to James Mair. Present owner of contract, ———. Patent No. 6. Issued Dec. 27th, 1883, for the land described above.

Contract No. 3622.

Issued May 26th, 1884, to M. J. Golden, for the E. ½ of NW. ¼, SW. ¼ of NE. ¼, and Lot 2 of Sec. 1, T. 1 S., R. 15 W., S. B. M., containing 160 acres. Agreed pur. price, $320.00. Pur. price paid, $427.17. Int. paid, $139.17. Deed issued to . Present Owner of Contract ———. Patent No. 6. Issued Dec. 27th, 1883, for the land described above.

Contract No. 3620.

Issued May 26th, 1884, to Mrs. M. C. Tullis, for the SW. ¼ of SE. ¼ of Sec. 1, T. 1 S., R. 15 W., S. B. M., containing 40 acres. Agreed pur. price, $———. Pur. price paid, $100.00. Int. paid, $———. Deed issued May 28th, 1884, to M. C. Tullis. Present owner of contract, ———. Patent No. 6. Issued Dec. 27th, 1883, for the land described above.

Contract No. 3623.

Issued May 26th, 1884, to Noah Levering, for the SW. ¼ of SW. ¼ of Sec. 1, T. 1 S., R. 15 W., S. B. M., containing 40 acres. Agreed pur. price, $———. Pur. price paid, $128.00 Int. paid, $———. Deed issued June 3d, 1889, to Noah Levering. Present owner of contract, ———. Patent No. 6. Issued Dec. 27th, 1883, for the land described above.

Contract No. 8010.

Issued Aug. 11th, 1887, to H. S. Bridge, for the NW. ¼ of SW. ¼ of Sec. 1, T. 1 S., R. 15 W., S. B. M., containing 40 acres. Agree pur. price, $———. Pur. price paid, $147.80. Int. paid, $———. Deed issued Feb. 28th, 1896, to Leander Shores. Present owner of contract ———. Patent No. 6. Issued Dec. 27th, 1883, for the land described above.

Contract No. 3629.

Issued May 26th, 1884, to T. J. Moffett, for the W. ½ of SE. ¼ and W. ½ of E. ¼ of Sec. 11, T. 1 S., R. 15 W., S. B. M., containing 160 acres. Agreed pur. price, $———. Pur. price paid, $320.00. Int. paid, $———. Deed issued May 28th, 1884, to T. J. Moffett. Present owner of contract, ———. Patent No. 6. Issued Dec. 27th, 1883, for the land described above.

Contract No. 3628.

Issued May 26th, 1884, to H. E. Martens, for the NE. ¼ of SE. ¼ and SE. ¼ of NE. ¼ of Sec. 11, T. 1 S., R. 15 W., S. B. M., containing 80 acres. Agreed pur. price, $———. Pur. price paid, $160.00. Int. paid, $———. Deed issued May 28th, 1884, to H. E. Martens. Present owner of contract, ———. Patent No. 6. Issued Dec. 27th, 1883, for the land described above.

Contract No. 3623.

Issued May 26th, 1884, to Noah Levering, for the NE. ¼ of NE. ¼ of Sec. 11, T. 1 S., R. 15 W., S. B. M., containing 40 acres. Agreed pur. price, $———. Pur. price

paid, $102.40. Int. paid, $———. Deed issued June 3d, 1889, to Noah Levering. Present owner of contract, ———. Patent N. 6. Issued Dec. 27th, 1883, for the land described above.

Contract No. 3627.

Issued May 26th, 1884, to Pierce E. Benedict, for S. ½ of NW. ¼ and SW. ¼ of Sec. 11, T. 1 S., R. 15 W., S. B. M., containing 240 acres. Agreed pur. price, $———. Pur. price paid, $400.80. Int. paid, $ ———. Deed issued May 28th, 1884, to Pierce E. Benedict. Present owner of contract, ———. Patent No. 6. Issued Dec. 27th, 1883, for the land described above.

Contract No. 3626.

Issued May 26th, 1884, to Mary F. Ritchie, for the SE. ¼ of SE. ¼ of Sec. 11, T. 1 S., R. 15 W., S. B. M., containing 40 acres. Agreed pur. price, $———. Pur. price paid, $120.00. Int. paid, $———. Deed issued May 28th, 1884, to Mary F. Ritchie. Present owner of contract, ———. Patent No. 6. Issued Dec. 27th, 1883, for the land described above.

Contract No. 6656.

Issued April 4th, 1887, to B. Chandler, for Lot 1 of Sec. 3, T. 2 S., R. 11 W., S. B. M., containing 21.35-100 acres. Agreed pur. price, $———. Pur. price paid, $153,26. Int. paid, $———. Deed issued Oct. 25th, 1887, to Burdett Chandler. Present owner of contract, ———. Patent No. 1. Issued Mch. 29th, 1876, for the land described above.

Contract No. 1281.

Issued Oct. 6th, 1881, to Robert Turnbull, for the NE. ¼ of SE. ¼ and S. ½ of SE. ¼ of Sec. 9, T. 2 S., R. 11 W., S. B. M., containing 120 acres. Agreed pur. price, $———. Pur. price paid, $304.20. Int. paid $———. Deed issued Jan. 21st, 1882, to Robert Turnbull. Present owner of contract, ———. Patent No. 1. Issued March 29th, 1876, for the land described above.

Contract No. 835.

Issued July 26th, 1880, to Alice W. Barrows, for Lots 1 and 2 of Sec. 3, T. 2 S., R. 13 W., S. B. M., containing 4 acres. Agreed pur. price, $———. Pur. price paid, $250.00. Int. paid, $———. Deed issued July 28th, 1880, to Alice W. Barrows. Present owner of contract, ———. Patent No. 1. Issued Mch. 29th, 1876, for the land described above.

Contract No. 2063.

Issued Jan. 23d, 1882, to Martha Vaughn, for fraction of Lot 1 of Sec. 5, T. 2 S., R. 13 W., S. B. M., containing 7-100 acres. Agreed pur. price, $———. Pur. price paid, $60. Int. paid, $———. Deed issued Feb. 14th, 1882, to Martha Vaughn. Present owner of contract, ———. Patent No. 1. Issued Mch. 29th, 1876, for the land described above.

Contract No. 2074.

Issued Feb. 3d, 1882, to James E. Blair, for fraction of Lot 1 of Sec. 5, T. 2 S., R. 13 W., S. B. M., containing 26-100 acres. Agreed pur. price, $———. Pur. price,

paid, $60. Int. paid, $———. Deed issued Feb. 14th, 1882, to James E. Blair. Present owner of contract, ———. Patent No. 1. Issued March 29th, 1876, for the land described above.

Contract No. 2508.

Issued Oct. 24th, 1882, to Camile Garnier, for the S. ½ of NE. ¼ of Sec. 11, T. 2 S., R. 14 W., S. B. M., containing 80 acres. Agreed pur. price, $———. Pur. price paid, $6400 Int. paid, $———. Deed issued Oct. 27th, 1882, to Camille Garnier. Present owner of contract, ———. Patent No. 4. Issued June 26th, 1882, for the land described above.

Contract No. 2044.

Issued Jan. 11th, 1882. To E. L. Spitley and James T. Hoblit, for the SW. ¼ of Sec. 13, T. 2 S., R. 14 W., S. B. M., containing 160 acres. Agreed pur. price, $———. Pur. price paid, $4974.80. Int. paid, $———. Deed issued Jan. 12th, 1882, to E. L. Spitley and James T. Hoblit. Present owner of contract, ———. Patent No. 1. Issued March 29th, 1876, for the land described above.

Contract No. 1672.

Issued Nov. 9th, 1881, to Louis Sentous, for all of fractional sec. 17, T. 2 S., R. 14 W., S. B. M., containing 392.59-100 acres. Agreed pur. price, $———. Pur. price paid, $2956.55. Int. paid, $———. Deed issued Jan. 4th, 1883, to Louis Sentous. Present owner of

contract, ————. Patent No. 1. Issued Mch. 29th, 1876, for the land described above.

Contract No. 2211.

Issued March 23d, 1882, to R. W. Waterman, for the SW. ¼ of NE. ¼, W. ½ of SE. ¼ and W. ½ of Sec. 11, T. 1 N., R. 4 W., S. B. M., containing 440 acres. Agreed pur. price, $———. Pur. price paid, $1560. Int. paid, $———. Deed issued April 3rd, 1882, to R. W. Waterman. Present owner of contract, ————. Patent No. 9. Issued Jan. 9th, 1885, for the land described above.

Contract No. 3026.

Issued Jan. 11th, 1884, to Aaron Harrison, for the fractional SW. ¼ of Sec. 13, T. 1 N., R. 4 W., S. B. M., Containing 113.54-100 acres. Agreed pur. price, $———. Pur. price paid, $1,329.66. Int. paid, $——— Deed issued Feb. 24th, 1887, to Aaron Harrison. Present owner of contract, ————. Patent No. 6. Issued Dec. 27th, 1883, for the land described above.

Contract No. 4642.

Issued June 1st, 1885, to H. H. Linville, for the fractional NW. ¼ of Sec. 27, T. 1 N., R. 5 W., S. B. M., containing 152.40-100 acres. Agreed pur. price, $762. Pur. price paid, $493.76. Int. paid, $341.36. Deed issued to . Present owner of contract, ————. Patent No. 6. Issued Dec. 27th, 1883, for the land described above.

Contract No. 3554.

Issued May 15th, 1884, to Frank Bohnart, for Lots 2 and 3 of NE. ¼ of Sec. 27, T. 1 N., R. 5 W., S. B. M., containing 57.91-100 acres. Agreed pur. price, $———. Pur. price pair, $456.84. Int. paid, $———. Deed issued Jan. 6th, 1890, to Frank Bohnart. Present owner of contract, ———. Patent No. 6. Issued Dec. 27th, 1883, for the land described above.

Contract No. 3553.

Issued May 15th 1884, to E. H. Morse, for the fractional SE. ¼ of Sec. 27, T. 1 N., R. 5 W., S. B. M., containing 159.99-100 acres. Agreed pur. price $———. Pur. price paid, $1148.46. Int. paid, $———. Deed issued Dec. 29th, 1886, to E. H. Morse. Present owner of contract, ———. Patent No. 6. Issued Dec. 27th, 1883, for the land described above.

Contract No. 4234.

Issued Jan. 29th, 1885, to J. R. Nevin, for the SW. ¼ of Sec. 27, T. 1 N., R. 5 W., S. B. M., containing 160 acres. Agreed pur. price, $———. Pur. price paid, $1021. Int. paid, $———. Deed issued Jan. 9th, 1890, to Joseph R. Nevin. Present owner of contract, ———. Patent No. 6. Issued Dec. 27th, 1883, for the land described above.

Contract No. 6011.

Issued Nov. 1st, 1886, to F. W. Wood and Geo. S. Safford, for the W. ½ of SW. ¼ of Sec. 9, T. 1 N., R. 6 W., S. B. M., containing 80 acres. Agreed pur. price, $———.

Pur. price paid, $231.73. Int. paid, $———. Deed issued Sept. 23d, 1889, to F. W. Wood and Geo. S. Safford. Present owner of contract. ———. Patent No. 6. Issued Dec. 27th, 1883, for the land described above.

Contract No. 3266.

Issued March 3d, 1884, to Michael Sainsevain, for the W. ½ of Sec. 11, T. 1 N., R. 6 W., S. B. M., containing 320 acres. Agreed pur. price, $———. Pur. price paid, $867.20. Int. paid, $———. Deed issued Sept. 28th, 1885, to Jean L. Sainsevain. Present owner of contract, ———. Patent No. 6. Issued Dec. 27th, 1883, for the land described above.

Contract No. 3264.

Issued March 3d, 1884, to A. G. Perdew, for the S. ½ of SE. ¼ of Sec. 13, T. 1 N., R. 6 W., S. B. M., containing 80 acres. Agreed pur. price, $———. Pur. price paid, $1026.15. Int. paid, $———. Deed issued Mch. 27th, 1889, to M. Byrne. Present owner of contract, ———. Patent No. 6. Issued Dec. 27th, 1883, for the land described above.

Contract No. 3265.

Issued March 3d, 1884, to R. P. Perdew, for the N ½ of SE. ¼ of Sec. 13, T. 1 N., R. 6 W., S. B. M., containing 80 acres. Agreed pur. price, $———. Pur. price paid, $1109.86. Int. paid, $———. Deed issued Feb. 16th, 1891, to M. Byrne. Present owner of contract, ———. Patent No. 6. Issued Dec. 27th, 1883, for the land described above.

Contract No. 3436.

Issued April 17th, 1884, to Archibald Martin, for the SW. ¼ of Sec. 13, T. 1 N., R. 6 W., S. B. M., containing 160 acres. Agreed pur. price, $———. Pur. price paid, $2046.75. Int. paid, $———. Deed issued June 3d, 1889, to Archibald Martin. Present owner of contract, ———. Patent No. 6. Issued Dec. 27th, 1883, for the land described above.

Contract No. 6210.

Issued Jan. 3d, 1887, to T. Banbury, for the NE. ¼ of Sec. 15, T. 1 N., R. 6 W., S. B. M., containing 160 acres. Agreed pur. price, $800. Pur. price paid, $382. Int. paid, $224. Deed issued ——— to ———. Present owner of contract, ———. Patent No. 6. Issued Dec. 27th, 1883, for the land described above.

Contract No. 4411.

Issued March 3d, 1885, to F. W. Wood and George S. Safford, for the NW. ¼ of Sec. 15, T. 1 N., R. 6 W., S. B. M.. containing 160 acres. Agreed pur. price, $———. Pur. price paid, $2052.22. Int. paid, $———. Deed issued March 28th, 1890, to F. W. Wood and George S. Safford. Present owner of contract, ———. Patent No. 6. Issued Dec. 27th, 1883, for the land dscribed above.

Contract No. 3365.

Issued March 24th, 1884, to Mrs. Maria Porter, for the E. ½ of SE. ¼ of Sec. 15, T. 1 N., R. 6 W., S. B. M., containing 80 acres. Agreed pur. price, $———. Pur.

price paid, $1063.80. Int. paid, $———. Deed issued Feb. 14th, 1891, to Mrs. Maria Porter. Present owner of contract, ———. Patent No. 6. Issued Dec. 27th, 1883, for the land described above.

Contract No. 4312.

Issued Feb. 7th, 1885, to T. Banbury, for the W. ½ of SE. ¼ of Sec. 15, T. 1 N., R. 6 W., S. B. M., containing 80 acres. Agreed pur. price, $800. Pur. price paid, $518.40. Int. paid, $358.40. Deed issued ——— to ———. Present owner of contract, ———. Patent No. 6. Issued Dec. 27th, 1883, for the land described above.

Contract No. 3366.

Issued March 24th, 1884, to Charles H. Morse, for the E. ½ of SW. ¼ of Sec. 15, T. 1 N., R. 6 W., S. B. M., containing 80 acres. Agreed pur. price, $———. Pur. price paid, $1030.07. Int. paid, $———. Deed issued May 17th, 1888, to F. W. Wood and Geo. S. Safford. Present owner of contract, ———. Patent No. 6. Issued Dec. 27th, 1883, for the land described above.

Contract No. 3966.

Issued Oct. 1st, 1884, to William Hawker, for the W. ½ of SW. ¼ of Sec. 15, T. 1 N., R. 6 W., S. B. M., containing 80 acres. Agreed pur. price, $———. Pur. price paid, $1024. Int. paid, $———. Deed issed Sept. 23d, 1889, to Mrs. I. P. Dupuytren, F. W. Wood and Geo. S. Safford. Present owner of contract, ———. Patent No. 6. Issued Dec. 27th, 1883, for the land described above.

Contract No. 5676.

Issued June 17th, 1886, to C. Elliott and M. Kelleher, for the E. ½ of NE. ¼ of Sec. 17, T. 1 N., R. 6 W., S. B. M., containing 80 acres. Agreed pur. price, $400 Pur. price paid, $294.58. Int. paid, $173.44. Deed issued ——— to ———. Present owner of contract, ———. Patent No. 6. Issued Dec. 27th, 1883, for the land described above.

Contract No. 10252.

Issued May 19th, 1890, to T. Banbury, for the E. ½ of NE. ¼ and W. ½ of SE. ¼ of Sec. 23, T. 1 N., R. 6 W., S. B. M., containing 160 acres. Agreed pur. price, $———. Pur. price paid, $1771.60. Int. paid, $———. Deed issued Feb. 17th, 1892, to T. Banbury. Present owner of contract, ———. Patent No. 6. Issued Dec. 27th, 1883, for the land described above.

Contract No. 3267.

Issued March 3d, 1884, to T. Banbury, for the SW. ¼ of NE. ¼, SE. ¼ of NW. ¼, and SW. ¼ of Sec. 23, T. 1 N., R. 6 W., S. B. M., containing 240 acres. Agreed pur. price, $———. Pur. price paid, $2560. Int. paid, $———. Deed issued Apl. 16th, 1889, to T. Banbury. Present owner of contract, ———. Patent No. 6. Issued Dec. 27th, 1883, for the land described above.

Contract No. 6498.

Issued March 16th, 1887, to Henry M. Loud, for the W. ½ of NW. ¼ of Sec. 23, T. 1 N., R. 6 W., S. B. M., containing 80 acres. Agreed pur. price, $———. Pur.

price paid, $289.60. Int. paid, $———. Deed issued Mch. 16th, 1896, to Henry M. Loud. Present owner of contract, ———. Patent No. 6. Issued Dec. 27th, 1883, for the land described above.

Contract No. 10,253.

Issued March 19th, 1890, to William Dickey, for the E. ½ of SE. ¼ of Sec. 23, T. 1 N., R. 6 W., S. B. M., containing 80 acres. Agreed pur. price, $———. Pur. price paid, $800.00. Int. paid, $———. Deed issued Mch. 28th, 1890, to William Dickey, Present owner of contract, ———. Patent No. 6. Issued Dec. 27th, 1883, for the land described above.

Contract No. 3931.

Issued Sept. 24th, 1884, to E. H. Forester, for the NW. ¼ of NW. ¼, NE. ¼ of NE. ¼, S. ½ of NE. ¼, S. ½ of NW. ¼, and S. ½ of Sec. 25, T. 1 N., R. 6 W., S. B. M., containing 560 acres. Agreed pur. price, $4200. Pur. price paid, $1,780.80. Int. paid, $940.80. Deed issued ———, to ———. Present owner of contract, ———. Patent No. 6. Issued Dec. 27th, 1883, for the land described above.

Contract No. 3868.

Issued Aug. 20th, 1884, to Joseph A. Scott, for the NW. ¼ of NE. ¼, and NE. ¼ of NW. ¼ of Sec. 25, T. 1 N., R. 6 W., S. B. M., containing 80 acres. Agreed pur. price, $———. Pur. price paid, $700.80. Int. paid, $———. Deed issued Aug. 29th, 1887, to Joseph A. Scott. Present owner of contract, ———. Patent

No. 6. Issued Dec. 27th, 1883, for the land described above.

Contract No. 10,250.

Issued March 15th, 1890, to Geo. S. Safford, F. W. Wood, and Mrs. I. Pigne Dupuytren, for the NW. ¼ of NE. ¼ of Sec. 27, T. 1 N., R. 6 W., S. B. M., containing 40 acres. Agreed pur. price, $400. Pur. price paid, $236.80. Int. paid, $156.80. Deed issued ———, to ———. Present owner of contract, ———. Patent No. 6. Issued Dec. 27th, 1883, for the land described above.

Contract No. 5678.

Issued June 17th, 1886, to C. Elliott, for the E. ½ of NE. ¼ of Sec. 27, T. 1 N., R. 6 W., S. B. M., containing 80 acres. Agreed pur. price, $400. Pur. price paid, $214.40. Int. paid, $134.40. Deed issued ———, to ———. Present owner of contract, Geo. C. Mesnager and Pierre Darancette. Patent No. 6. Issued Dec. 27th, 1883, for the land described above.

Contract No. 4411.

Issued March 3d, 1885, to F. W. Wood and Geo. S. Safford, for the SW. ¼ of NE. ¼; NW. ¼ of SE. ¼, and NW. ¼ of Sec. 27, T. 1 N., R. 6 W., S. B. M., containing 240 acres. Agreed pur. price, $———. Pur. price paid, $2,308.26. Int. paid, $———. Deed issued Mar. 28th, 1890, to F. W. Wood and Geo. S. Safford. Present owner of contract, ———, Patent No. 6. Issued Dec. 27th, 1883, for the land described above.

Contract No. 4436.

Issued March 13th, 1885, to T. Banbury, for the E. ½ of SE. ¼ of Sec. 27, T. 1 N., R. 6 W., S. B. M., containing 80 acres. Agreed pur. price, $———. Pur. price paid, $553.40. Int. paid, $———. Deed issued Feb. 9th, 1892, to T. Banbury, Present owner of contract, ———. Patent No. 6. Issued Dec. 27th, 1883, for the land described above.

Contract No. 4418.

Issued March 5th, 1885, to E. L. Watkins, for the SW. ¼ of SE. ¼ of Sec. 27, T. 1 N., R. 6 W., S. B. M., containing 40 acres. Agreed pur. price, $———. Pur. price paid, $517.60. Int. paid, $———. Deed issued June 7th, 1890, to F. W. Wood, Geo. S. Safford, and Mrs. I. P. Dupuytren. Present owner of contract, ———. Patent No. 6. Issued Dec. 27th, 1883, for the land described above.

Contract No. 5868.

Issued Aug. 24th, 1886, to N. B. Bradley and H. M. Loud, for the E. ½ of SW. ¼ of Sec. 27, T. 1 N., R. 6 W., S. B. M., containing 80 acres. Agreed pur. price, $———. Pur. price paid, $805.76. Int. paid, $———. Deed issued Oct. 7th, 1887, to N. B. Bradley and H. M. Loud. Present owner of contract, ———. Patent No. 6. Issued Dec. 27th, 1883, for the land described above.

Contract No. 5679.

Issued June 17th, 1886, to C. Elliott, for the W. ½ of SW. ¼ of Sec. 27, T. 1 N., R. 6 W., S. B. M., containing

80 acres. Agreed pur. price, $———. Pur. price paid, $251.05. Int. paid, $———. Deed issued Jan. 13th, 1891, to R. W. Poindexter. Present owner of contract, ———. Patent No. 6. Issued Dec. 27th, 1883, for the land described above.

Contract No. 6160.

Issued Dec. 20th, 1886, to W. H. Carlson, for the W. ½ of Sec. 29, T. 1 N., R. 6 W., S. B. M., containing 320 acres. Agreed pur. price, $1600. Pur. price paid, $498.60. Int. paid, $179.20. Deed issued ———, to ———. Present owner of contract, ———. Patent No. 6. Issued Dec. 27th, 1883, for the land described above.

Contract No. 3297.

Issued March 10th, 1884, to Geo. Chaffey, for the E. ½ of SE. ¼ of Sec. 29, T. 1 N., R. 6 W., S. B. M., containing 80 acres. Agreed pur. price, $———. Pur. price paid, $882.13. Int. paid, $———. Deed issued Jan. 12th, 1886, to George Chaffey. Present owner of contract, ———. Patent No. 6. Issued Dec. 27th, 1883, for the land described above.

Contract No. 3298.

Issued March 10th, 1884, to Geo. Chaffey, for the W. ½ of SE. ¼ of Sec. 29, T. 1 N., R. 6 W., S. B. M., containing 80 acres. Agreed pur. price, $———. Pur. price paid, $1,104.31. Int. paid, $———. Deed issued Apl. 21st, 1891, to Thomas Thomsen. Present owner of contract, ———. Patent No. 6. Issued Dec. 27th, 1883, for the land described above.

Contract No. 4185.

Issued Jan. 7th, 1885, to Leslie T. Smith, for the E. ½ of NE. ¼ of Sec. 31, T. 1 N., R. 6 W., S. B. M., containing 80 acres. Agreed pur. price, $———. Pur. price paid, $800. Int. paid, $———. Deed issued Jan. 9th, 1885, to Leslie T. Smith. Present owner of contract, ———. Patent No. 6. Issued Dec. 27th, 1883, for the land described above.

Contract No. 6089.

Issued Nov. 26th, 1886, to W. Taylor English, for the N. ½ of SW. ¼ and W. ½ of NE. ¼ of Sec. 31, T. 1 N., R. 6 W., S. B. M., containing 160.55-100 acres. Agreed pur. price, $1,605.50. Pur. price paid, $1,190.30. Int. paid, $747.95. Deed issued ———, to ———. Present owner of contract, John S. Mattman. Patent No. 6. Issued Dec. 27th, 1883, for the land described above.

Contract No. 5650.

Issued June 5th, 1886, to W. T. Baker and H. L. Macneil, for the fractional NW. ¼ of Sec. 31, T. 1 N., R. 6 W., S. B. M., containing 162.19-100 acres. Agreed pur. price, $———. Pur. price paid, $1,053.98. Int. paid, $———. Deed issued Dec. 2d, 1891, to Charles R. Long and Thomas Thomsen. Present owner of contract, ———. Patent No. 6. Issued Dec. 27th, 1883, for the land described above.

Contract No. 10,253.

Issued March 19th, 1890, to William Dickey, for the W. ½ of SE. ¼, and S. ½ of SW. ¼ of Sec. 31, T. 1 N., R. 6

W., S. B. M., containing 160.18-100 acres. Agreed pur, price, $———. Pur. price paid, $1,601.80. Int. paid, $———. Deed issued Mch. 28th, 1890, to William Dickey. Present owner of contract, ———. Patent No. 6. Issued Dec. 27th, 1883, for the land described above.

Contract No. 10,265.

Issued April 4th, 1890, to William Dickey, for the SE. ¼ of SE. ¼ of Sec. 31, T. 1 N., R. 6 W., S. B. M., containing 40 acres. Agreed pur. price, $———. Pur. price paid, $400. Int. paid, $———. Deed issued Apl. 8th, 1890, to William Dickey. Present owner of contract, ———. Patent No. 6. Issued Dec. 27th, 1883, for the land described above.

Contract No. 10,902.

Issued Nov. 7th, 1891, to James Hanley, for the NE. ¼ of SE. ¼ of Sec. 31, T. 1 N., R. 6 W., S. B. M., containing 40 acres. Agreed pur. price, $400. Pur. price paid, $124.80. Int. paid, $44.80. Deed issued ———, to ———. Present owner of contract, ———. Patent No. 6. Issued Dec. 27th, 1883, for the land described above.

Contract No. 5869.

Issued Aug. 24th, 1886, to N. B. Bradley and H. M. Loud, for the NE. ¼ of Sec. 35, T. 1 N., R. 6 W., S. B. M., containing 160 acres. Agreed pur. price, $———. Pur. price paid, $1,468.80. Int. paid, $———. Deed issued Sept. 16th, 1890, to N. B. Bradley and H. M. Loud. Present owner of contract, ———. Patent No. 6. Issued Dec. 27th, 1883, for the land described above.

Contract No. 5870.

Issued Aug. 24th, 1886, to N. B. Bradley and H. M. Loud, for the E. ½ of Sec. 35, T. 1 N., R. 6 W., S. B. M., containing 160 acres. Agreed pur. price, $———. Pur. price paid, $1,468.80. Int. paid, $———. Deed issued Sept. 16th, 1890, to N. B. Bradley and H. M. Loud. Present owner of contract, ———. Patent No. 6. Issued Dec. 27th, 1883, for the land described above.

Contract No. 5209.

Issued Jan. 12th, 1886, to M. E. Wood, for the NW. ¼ of Sec. 35, T. 1 N., R. 6 W., S. B M, containing 160 acres. Agreed pur. price, $———. Pur. price paid, $1536. Int. paid, $———. Deed issued Jan. 13th, 1891, to M. E. Wood. Present owner of contract, ———. Patent No. 6. Issued Dec. 27th, 1883, for the land described above.

Contract No. 5680.

Issued June 17th, 1886, to C. Elliott, for the SW. ¼ of Sec. 35, T. 1 N., R. 6 W., S. B. M., containing 160 acres. Agreed pur. price, $———. Pur. price paid, $1,582.67. Int paid, $———. Deed issued Mar. 10th, 1892, to S. K. McIlhenny. Present owner of contract, ———. Patent No. 6. Issued Dec. 27th, 1883, for the land described above.

Contract No. 3559.

Issued May 15th, 1884, to J. C. Sommer, for Lots 1 and 2 of Sec. 21, T. 1 N., R. 7 W., S. B. M., containing 68.28 acres. Agreed pur. price, $———. Pur. price paid, $341.40. Int. paid, $———. Deed issued May 16th,

1884, to J. C. Sommer. Present owner of contract, ———. Patent No. 6. Issued Dec. 27th, 1883, for the land described above.

Contract No. 3558.

Issued May 15th, 1884, to H. E. Sontag, for Lots 3 and 4 of Sec. 21, T. 1 N., R. 7 W., S. B. M., containing 68.28-100 acres. Agreed pur. price, $———. Pur. price paid, $341.93. Int. paid, $———. Deed issued June 16th, 1884, to H. E. Sontag. Present owner of contract, ———. Patent No. 6. Issued Dec. 27th. 1883, for the land described above.

Contract No. 3710.

Issued June 13th, 1884, to I. W. Heldman and O. W. Childs, for the fractional E. ½ of Sec. 27, T. 1 N., R. 7 W., S. B. M., containing 173.48-100 acres. Agreed pur. price, $———. Pur. price paid, $1,518.42. Int. paid, $———. Deed issued June 24th, 1884, to I. W. Heldman and O. W. Childs. Present owner of contract, ———. Patent No. 6. Issued Dec. 27th, 1883, for the land described above.

Contract No. 3557.

Issued May 15th, 1884, to A. O. Porter, for the NW. ¼ of NE. ¼; E. ½ of NE. ¼, SE. ¼ of SE. ¼ and Lots 1, 2, 3, and 4 of Sec. 35, T. 1 N., R. 7 W., S. B. M., containing 165.88-100 acres. Agreed pur. price, $———. Pur. price paid, $1,658.80. Int. paid, $———. Deed issued May 16th, 1884, to A. O. Porter. Present owner of contract, ———. Patent No. 6. Issued Dec. 27th, 1883, for the land described above.

Contract No. 773.

Issued Dec. 10th, 1879, to Albert A. Dexter, Jr., for the NE. ¼ of NW. ¼ of Sec. 13, T. 1 N., R. 8 W., S. B. M., containing 40 acres. Agreed pur. price, $———. Pur. price paid, $100 Int. paid, $———. Deed issued Dec. 11th, 1879, to Albert A. Dexter, Jr. Present owner of contract, ———. Patent No. 2. Issued April 4th, 1879, for the land described above.

Contract No. 1022.

Issued March 8th, 1881, to W. R. Wiggins, for the SE. ¼ of NW. ¼ of Sec. 13, T. 1 N., R. 8 W., S. B. M., containing 40 acres. Agreed pur. price, $———. Pur. price paid, $100 Int. paid, $———. Deed issued March 17th, 1881, to W. R. Wiggins. Present owner of contract, ———. Patent No. 2. Issued April 4th, 1879, for the land described above.

Contract No. 1034.

Issued March 23d, 1881, to W. R. Wiggins, for the SW. ¼ of NW. ¼ of Sec. 13, T. 1 N., R. 8 W., S. B. M., containing 40 acres. Agreed pur. price, $———. Pur. price paid, $100. Int. paid, $———. Deed issued March 24th, 1881, to W. R. Wiggins. Present owner of contract, ———. Patent No. 2. Issued April 4th, 1879, for the land described above.

Contract No. 2340.

Issued July 7th, 1882, to M. L. Wicks, for the NW. ¼ of NW. ¼ of Sec. 13, T. 1 N., R. 8 W., S. B. M., containing 40 acres. Agreed pur. price, $———. Pur. price paid,

$513.12. Int. paid, $———. Deed issued Aug. 8th, 1887, to Pomona Land and Water Co. Present owner of contract, ———. Patent No. 2. Issued Apl. 4th, 1879, for the land described above.

Contract No. 3861.

Issued Aug. 11th, 1884, to Pomona Land and Water Co., for the W. ½ of SW. ¼ of Sec. 15, T. 1 N., R. 8 W., S. B. M., containing 80 acres. Agreed pur. price, $———. Pur. price paid, $200. Int. paid, $———. Deed issued Aug. 12th, 1884, to Pomona Land and Water Co. Present owner of contract, ———. Patent No. 6. Issued Dec. 27th, 1883, for the land described above.

Contract No. 2756.

Issued April 25th, 1883, to N. W. Stowell, for the SE. ¼ of Sec. 19, T. 1 N., R. 8 W., S. B. M., containing 160 acres. Agreed pur. price, $———. Pur. price paid, $488.05. Int. paid, $———. Deed issued April 5th, 1887, to L. L. Bradbury. Present owner of contract, ———. Patent No. 1. Issued March 29th, 1876, for the land described above.

Contract No. 6133.

Issued Dec. 14th, 1886, to J. L. Howland, for the E. ½ of SW. ¼, and SE. ¼ of Sec. 21, T. 1 N., R. 8 W., S. B. M., containing 240 acres. Agreed pur. price, $600. Pur. price paid, 321.60. Int. paid, $201.60. Deed issued ———, to ———. Present owner of contract, ———. Patent No. 2. Issued April 4th, 1879, for the land described above.

Contract No. 2851.

Issued Sept. 27th, 1883, to Wm. Carthy, for the SW. ¼ of SW. ¼ of Sec. 21, T. 1 N., R. 8 W., S. B. M., containing 40 acres. Agreed pur. price, $———. Pur. price paid, $116.33. Int. paid, $———. Deed issued Sept 24th, 1886, to H. Hiller. Present owner of contract, ———. Patent No. 2. Issued April 4th, 1879, for the land described above.

Contract No. 4507.

Issued April 6th, 1885, to Henry H. Colegrove, for the NW. ¼ of SW. ¼ of Sec. 21, T. 1 N., R. 8 W., S. B. M., containing 40 acres. Agreed pur. price, $———. Pur, price paid, $100. Int. paid, $———. Deed issued Apl. 13th, 1885, to Henry H. Colegrove. Present owner of contract, ———. Patent No. 2. Issued April 4th, 1879, for the land described above.

Contract No. 7012.

Issued May 13th, 1887, to C. Elliott and M. Kelleher, for the W. ½ of NE. ¼ of Sec. 23, T. 1 N., R. 8 W., S. B. M., containing 80 Acres. Agreed pur. price, $400. Pur. price paid, $102.40. Int. paid, $22.40. Deed issued——— to ———. Present owner of contract, ———. Patent No. 2. Issued April 4th, 1879, for the land described above.

Contract No. 2341.

Issued July 7th, 1882, to Cyrus T. iMlls, for the E ½ of NE. ¼ of Sec. 23, T. 1 N., R. 8 W., S. B. M., containing 80 acres. Agreed pur. price, $———. Pur. price paid, $469.75. Int. paid, $———. Deed issued Aug. 19th,

1885, to Edward Evey. Present owner of contract, ——. ——. Patent No. 2. Issued April 4th, 1879, for the land described above.

Contract No. 5689.

Issued June 22d, 1886, to W. J. Bodenhamer, for Lots 1, 2 and 3 of Sec. 25, T. 1 N., R. 8 W., S. B. M., containing 67. 51-100 acres. Agreed pur. price, $———. Pur. price paid, $180.70. Int. paid, $———. Deed issued Oct. 21st, 1887, to W. J. Bodenhamer. Present owner of contract, ———. Patent No. 2. Issued Apl. 4th, 1879, for the land described above.

Contract No. 6655.

Issued April 4th, 1887, to William Thorpe, for the S. ½ of SW. ¼ of Sec. 15, T. 1 N., R. 9 W., S. B. M., containing 80 acres. Agreed pur. price, $———. Pur. price paid, $256. Int. paid, $———. Deed issued Apl. 8th, 1892, to William Thorpe. Present owner of contract, ———. Patent No. 6. Issued Dec. 27th, 1883, for the land described above.

Contract No. 3866.

Issued Aug. 18th, 1884, to Evan Harer, for the S. ½ of SE. ¼ of Sec. 19, T. 1 N., R. 9 W., S. B. M., containing 80 acres. Agreed pur. price, $———. Pur. price paid $436.40. Int. paid, $———. Deed issued Apl. 5th, 1887, to Evan Harer. Present owner of contract, ———. Patent No. 6. Issued Dec. 27th, 1883, for the land described above.

Contract No. 3971.

Issued Oct. 3d, 1884, to J. C. West and J. J. West, for the N. ½ of SE. ¼ and SW. ¼ of Sec. 21, T. 1 N., R. 9 W., S. B. M., containing 240 acres. Agreed pur. price, $——. Pur. price paid, $1,364.27. Int. paid, $———. Deed issued Mch. 18th, 1887, to J. C. West and J. J. West. Present owner of contract, ———. Patent No. 6. Issued Dec. 27th, 1883, for the land described above.

Contract No. 3970.

Issued Oct. 3d, 1884, to W. B. Cullen, for S. ½ of SE. ¼ of Sec. 21, T. 1 N., R. 9 W., S. B. M., containing 80 acres. Agreed pur. price, $———. Pur. price paid, $479.70. Int. paid, $———. Deed issued May 1st, 1888, to Chas. A. H. de S. Sozigethy. Present owner of contract, ———. Patent No. 6. Issued Dec. 27th, 1883, for the land described above.

Contract No. 4025.

Issued Oct. 21st, 1884, to W. H. Bowman, for the SW. ¼ of SW. ¼ of Sec. 15, T. 1 N., R. 10 W., S. B. M., containing 40 acres. Agreed pur. price, $———. Pur. price paid, $100. Int. paid, $———. Deed issued Oct. 22d, 1884, to W. H. Bowman. Present owner of contract, ———. Patent No. 6. Issued Dec. 27th, 1883, for the land described above.

Contract No. 3923.

Issued Sept. 19th, 1884, to F. A. Bliss and W. W. Bliss, for the E. ½ of NE. ¼ and frl. SE. ¼ of Sec. 19, T. 1 N. R. 10 W., S. B. M., containing 189.43-100 acres. Agreed

pur. price, $———. Pur. price paid, $632.63. Int. paid, $———. Deed issued Sept. 18th, 1890, to F. A. Bliss and W. W. Bliss. Present owner of contract, ———. Patent No. 6. Issued Dec. 27th, 1883, for the land described above.

Contract No. 3947.

Issued Sept. 25th, 1884, to Nelson Van Tassel, for NE. ¼ of SW. ¼ and Lot 3 of Sec. 21, T. 1 N., R. 10 W., S. B. M., containing 75.55-100 acres. Agreed pur. price, $———. Pur. price paid, $420.47. Int, paid, $———. Deed issued Oct. 19th, 1886, to Nelson Van Tassel. Present owner of contract, ———. Patent No. 6. Issued Dec. 27th, 1883, for the land described above.

Contract No. 5743.

Issued July 6th, 1886, to William Lacey, for the NE. ¼ of NE. ¼ and Lot 4 of Sec. 21, T. 1 N., R. 10 W., S. B. M., containing 79.89-100 acres. Agreed pur. price, $199.72. Pur. price paid, $95.84. Int. Paid, $55.90. Deed issued ——— to ———. Present owner of contract, ———. Patent No. 6. Issued Dec. 27th. 1883, for the land described above.

Contract No. 3677.

Issued June 5th, 1884, to Philip Shorey, for the N. ½ of NE. ¼ of Sec. 25, T. 1 N., R. 10 W., S. B. M., containing 80 acres. Agreed pur. price, $———. Pur. price, paid, $280.32. Int. paid, $———. Deed issued June 30th, 1887, to Philip Shorey. Present owner of contract, ———. Patent No. 9. Issued Jan. 9th, 1885, for the land described above.

Contract No. 4449.

Issued March 17th, 1885, to J. S. Vosburg and W. G. Cogswell, for the E. ½ of SW. ¼, SE. ¼ and Lot 2 of Sec. 7, T. 1 N., R. 11 W., S. B. M., containing 283.75-100 acres. Agreed pur. price, $———. Pur. price paid, $464.20. Int. paid, $———. Deed issued Apl. 13th, 1885, to J. S. Vosburg and W. G. Coggswell. Present owner of contract, ———. Patent No. 8. Issued Aug. 8th, 1884, for the land described above.

Contract No. 11,343.

Issued June 12th, 1894, to Sarah Ann Brown, for NW. ¼ of NW. ¼ of Sec. 13, T. 1 N., R. 11 W., S. B. M., containing 40 acres. Agreed pur. price, $240. Pur. price paid, $61.44. Int. paid, $13.44. Deed issued ——— to ———. Present owner of contract, ———. Patent No. 6. Issued Dec. 27th, 1883, for the land described above.

Contract No. 4628.

Issued March 20th, 1885, to J. R. Brown, for the E. ½ of SW. ¼ of Sec. 13, T. 1 N., R. 11 W., S. B. M., containing 80 acres. Agreed pur. price, $———. Pur price paid, $237.36. Int. paid, $———. Deed issued Oct. 10th, 1888, to William D. Smith. Present owner of contract. ———. Patent No. 1. Issued Mch. 29th, 1876, for the land described above.

Contract No. 2830.

Issued Sept. 4th, 1883, to Elias J. Baldwin, for all of fractional Sec. 15, T. 1 N., R. 15 W., S. B. M., containing 591.12-100 acres. Agreed pur. price, $——. Pur. price

paid, $13,030.20. Int. paid, $———. Deed issued March 23d, 1889, to Elias J. Baldwin. Present owner of contract, ———. Patent No. 1. Issued March 29th, 1876, for the E. ½ of NE. ¼, NE. ¼ of NW. ¼; W. ½ of NW. ¼, NW. ¼ of SW. ¼, fractional SE. ¼ and Lots 1 and 2. Patent No. 6. Issued Dec. 27th, 1883, for the W. ½ of NE. ¼, SE. ¼ of NW. ¼, and NE. ¼ of SW. ¼.

Contract No. 829.

Issued July 16th, 1880, to George A. Macomber and H. S. Dickey, for the S. ½ of NE. ¼ of Sec. 17, T. 1 N., R. 11 W., S. B. M., containing 80 acres. Agreed pur. price, $———. Pur. price paid, $264.86. Int. paid, $———. Deed issued May 24th, 1886, to N. C. Carter. Present owner of contract, ———. Patent No. 1. Issued Mch. 29th, 1876, for the land described above.

Contract No. 841.

Issued Aug. 10th, 1880, to Geo. A. Macomber and H. S. Dickey, for the SE. ¼ of NW. ¼ of Sec. 17, T. 1 N., R. 11 W., S. B. M., containing 40 acres. Agreed pur. price, $———. Pur. price paid, $132.04. Int. paid, $———. Deed issued May 24th, 1886, to N. C. Carter. Present owner of contract, ———. Patent No. 1. Issued Mch. 29th, 1876, for the land described above.

Contract No. 502.

Issued Jan. 8th, 1877, to Nathaniel C. Carter, for the N. ½ of SE. ¼ and Lots 3 and 4 of Sec. 17, T. 1 N., R. 11 W., S. B. M., containing 108.77-100 acres. Agreed pur. price, $———. Pur. price paid, $761.40. Int. paid, $———. Deed issued Jan. 10th, 1882, to N. C. Carter.

Present owner of contract, ————. Patent No. 1. Issued Mch. 29th, 1876, for the land described above.

Contract No. 2299.

Issued April 26th, 1882, to H. J. Stevenson, for the NW. ¼ of NE. ¼ and Lots 3 and 4 of Sec. 23, T. 1 N., R. 11 W., S. B. M., containing $103.49-100 acres. Agreed pur. price, $————. Pur. price paid, $202.21. Int. paid, $————. Deed issued Aug. 15th, 1884, to W. N. Monroe. Present owner of contract, ————. Patent No. 1. Issued Mch. 29th, 1876, for the land described above.

Contract No. 2296.

Issued April 21st, 1882, to Charles Mueller, for the SW. ¼ of NW. ¼ and Lot 1 of Sec. 23, T. 1 N., R. 11 W., S. B. M., containing 58.62-100 acres. Agreed pur. price, $————. Pur. price paid, $297. Int. paid, $————. Deed issued Feb. 1st, 1887, to Charles Mueller. Present owner of contract, ————. Patent No. 1. Issued Mch. 29th, 1876, for the land described above.

Contract No. 743.

Issued Sept. 24th, 1879, to Luther Hall, for Lots 1 and 2 of NE. ¼ of Sec. 3, T. 1 N., R. 12 W., S. B. M., containing 80 acres. Agreed pur. price, $————. Pur. price paid, $200. Int. paid, $————. Deed issued Sept. 24th, 1879, to Luther Hall. Present owner of contract, ————. Patent No. 2. Issued Apl. 4th, 1879, for the land described above.

Contract No. 784.

Issued Feb. 6th, 1880, to R. J. Forsyth, for Lot 3 of NW. ¼ of Sec. 3, T. 1 N., R. 12 W., S. B. M., containing

39.88-100 acres. Agreed pur. price, $———. Pur. price paid, $119.64. Int. paid, $———. Deed issued Feb. 7th, 1880, to R. J. Forsyth. Present owner of contract, ———. Patent No. 2. Issued Apl. 4th, 1879, for the land described above.

Contract No. 735.

Issued Sept. 15th, 1879, to W. F. P. Noble, for Lot 4 of NW. ¼ of Sec. 3, T. 1 N., R. 12 W., S. B. M., containing 40.24-100 acres. Agreed pur. price, $———. Pur. price paid, $100.60. Int. paid, $———. Deed issued Sept. 17th, 1879, to W. F. P. Noble. Present owner of contract, ———. Patent No. 2. Issued Apl. 4th, 1879, for the land described above.

Contract No. 821.

Issued June 17th, 1880, to John McCann, for Lot 5 of Sec. 3, T. 1 N., R. 12 W., S. B. M., containing 20.16-100 acres. Agreed pur. price, $———. Pur. price paid, $50.40. Int. paid, $———. Deed issued June 18th, 1880, to John McCann. Present owner of contract, ———. Patent No. 2. Issued Apl. 4th, 1879, for the land described above.

Contract No. 1097.

Issued June 24th, 1881, to F. J. Woodbury and J. P. Woodbury, for the NE. ¼ of SE. ¼ of Sec. 3, T. 1 N., R. 12 W., S. B. M., containing 40 acres. Agreed pur. price, $———. Pur. price paid, $100. Int. paid, $———. Deed issued June 29th, 1881, to F. J. Woodbury and J. P. Woodbury. Present owner of contract,

———. Patent No. 2. Issued Apl. 4th, 1879, for the land described above.

Contract No. 961.

Issued Dec. 15th, 1880, to Levi W. Giddings, for Lots 1, 8 and 9 of Sec. 5, T. 1 N., R. 12 W., S. B. M., containing 76.20-100 acres. Agreed pur. price, $———. Pur. price paid, $201.17. Int. paid, $———. Deed issued Jan. 7th, 1882, to Levi W. Giddings. Present owner of contract, ———. Patent No. 2. Issued Apl. 4th, 1879, for the land described above.

Contract No. 738.

Issued Sept. 20th, 1879, to Levi W. Giddings, for Lot 2 of Sec. 5, T. 1 N., R. 12 W., S. B. M., containing 40 acres. Agreed pur. price, $———. Pur. price paid, $100. Int. paid, $———. Deed issued Sept. 22d, 1879, to Levi W. Giddings. Present owner of contract, ———. Patent No. 2. Issued Apl. 4th, 1879, for the land described above.

Contract No. 740.

Issued Sept. 22d, 1879, to Henry G. Monks, for Lots 3, 4, 5, 6 and 7 of Sec. 5, T. 1 N., R. 12 W., S. B. M., containing 148.28-100 acres. Agreed pur. price, $———. Pur. price paid, $370.70. Int. paid, $———. Deed issued Sept. 22d, 1879, to Henry G. Monks. Present owner of contract ———. Patent No. 2. Issued Apl. 4th, 1879, for the land described above.

Contract No. 771.

Issued Dec. 1st, 1879, to William Allen, for lots 1 and 2 of Sec. 11, T. 1 N., R. 12 W., S. B. M., containing 36.65-100 acres. Agreed pur. price, $———. Pur. price paid, $91.63. Int. paid, $———. Deed issued Dec. 1st, 1879, to William Allen. Present owner of contract ————. Patent No. 2. Issued Apl. 4th, 1879, for the land described above.

Contract No. 736.

Issued Sept. 15th, 1879, to William Allen, Mary A. Crank, Albert Brigden and James Craig, for lots 3, 4 and 5 of Sec. 11, T. 1 N., R. 12 W., S. B. M., containing 95.10-100 acres. Agreed pur. price, $———. Pur. price paid, $237.75. Int. paid, $———. Deed issued Sept. 17th, 1879, to William Allen, Mary A. Crank, Albert Brigden and James Craig. Present owner of contract, ————. Patent No. 2. Issued Apl. 4th, 1879, for the land described above.

Contract No. 717.

Issued June 27th, 1879, to Job C. Davis, for lot 4 of Sec. 13, T. 1 N., R. 12 W., S. B. M., containing 23.06-100 acres. Agreed pur. price, $———. Pur. price paid, $57.65. Int. paid, $———. Deed issued June 27th, 1879, to Job C. Davis. Present owner of contract, ————. Patent No. 2. Issued Apl. 4th, 1879, for the land described above.

Contract No. 778.

Issued Dec. 29th, 1879, to Samuel Chapman, Jr., for lots 1 and 2 of Sec. 13, T. 1 N., R. 12 W., S. B. M., con-

taining 47.20-100 acres. Agreed pur. price, $———. Pur. Price paid, $118.00. Int. paid, $———. Deed issued Dec. 29th, 1879, to Samuel Chapman, Jr. Present owner of contract, ————. Patent No. 2. Issued Apl. 4th, 1879, for the land described above.

Contract No. 737.

Issued Sept. 15th, 1879, to H. M. Fischer, for lots 1, 2 and 3 of Sec. 3, T. 1 N., R. 14 W., S. B. M., containing 99.77-100 acres. Agreed pur. price, $———. Pur. price paid, $289.85. Int. paid, $———. Deed issued Sept. 17th, 1880, to H. M. Fischer. Present owner of contract, ————. Patent No. 2. Issued Apl. 4th, 1879, for the land described above.

Contract No. 2038.

Issued Jan. 7th, 1882, to Henry Martz, for SE. ¼ of NW. ¼, SW. ¼ of NE. ¼ and NE. ¼ of SW. ¼ of Sec. 3, T. 1 N., R. 14 W., S. B. M., containing 120 acres Agreed pur. price, $———. Pur. price paid, $388.82. Int. paid, $———. Deed issued Aug. 2d, 1884, to Henry Martz. Present owner of contract, ————. Patent N. 2. Issued Apl. 4th, 1879, for the land described above.

Contract No. 1840.

Issued Dec. 16, 1881, to Wm. Vawter, for the SW. ¼ of NW. ¼ and Lots 4 and 5 of Sec. 3, T. 1 N., R. 14 W., S. B. M., containing 120 acres. Agreed pur. price, $———. Pur. price paid, $361.09. Int. paid, $———. Deed issued Apl. 1st, 1884 to E. W. Lewis. Present owner of

contract. Patent No. 2. Issued Apl. 4th, 1879, for the land described above.

Contract No. 1217.

Issued Sept. 20th, 1881, to Edwin Smith, for the SE. ¼ of Sec. 3, T. 1 N., R. 14 W., S. B. M., containing 160 acres. Agreed pur. price, $———. Pur. price paid, $500.80. Int. paid, $———. Deed issued Mch. 23d, 1886, to Charles J. Fox. Present owner of contract, ————. Patent No. 2. Issued Apl. 4th, 1879, for the land described above.

Contract No. 1207.

Issued Sept. 16th, 1881, to Andrew M. Smith, for the W. ½ of SW. ¼ and SE. ¼ of SW. ¼ of Sec. 3, T. 1 N., R. 14 W., S. B. M., containing 120 acres. Agreed pur. price, $———. Pur. price paid, $371.45. Int. paid, $——— Deed issued Sept. 27th, 1886, to Andrew M. Smith. Present owner of contract, ————. Patent No. 2. Issued April 4th, 1879, for the land described above.

Contract No. 4601.

Issued May 11th, 1885, to M. L. Wicks, for Lots 1 and 2 of Sec. 5, T. 1 N., R. 14 W., S. B. M., containing 7.39-100 acres. Agreed pur. price, $———. Pur. price paid, $24.65. Int. paid, $———. Deed issued June 20th, 1887, to J. W. Smith. Present owner of contract, ————. Patent No. 2. Issued Apl. 4th, 1879, for the land described above.

Contract No. 1275.

Issued Oct. 6th,1881, to Edwin Smith, for the fractional N. ½ of Sec. 9, T. 1 N., R. 14 W., S. B. M., containing 282.22-100 acres. Agreed pur. price, $———. Pur. price paid, $1061.43. Int. paid, $———. Deed issued Feb. 4th, 1884, to Edwin Smith. Present owner of contract, ———. Patent No. 2. Issued Apl. 4th, 1879, for the land described above.

Contract No. 915.

Issued Oct. 29th, 1880, to Edwin Smith, for the fractional S. ½ of Sec. 9, T. 1 N., R. 14 W., S. B. M., containing 260.02 acres. Agreed pur. price, $———. Pur. price paid, $1269.25. Int. paid, $———. Deed issued Jan. 23rd, 1884, to Edwin Smith. Present owner of Contract, ———. Patent No. 2. Issued Apl. 4th, 1879, for the land described above.

Contract No. 788.

Issued Mch. 11th, 1880, to Simon White, for the W. ½ of NW. ¼ and Lots 1, 2, 3 and 4 of Sec. 11, T. 1 N., R. 14 W., S. B. M., containing 134.24-100 acres. Agreed pur. price, $———. Pur. price paid, $507.40. Int. paid, $———. Deed issued Feb. 13th, 1884, to Simon White. Present owner of contract, ———. Patent No. 2. Issued April 4th, 1879, for the land described above.

Contract No. 1011.

Issued Feb. 19th, 1881, to Edwin Smith, for lot 1 of Sec. 15, T. 1 N., R. 14 W. S. B. M., containing 2.92-100 acres. Agreed pur price, $———. Pur. price paid,

$12.41. Int. paid, $———. Deed issued Feb. 24th, 1881, to Edwin Smith. Present owner of contract, ———. Patent No. 2. Issued April 4th, 1879, for the land described above.

Contract No. 3613.

Issued May 26th, 1884, to Clarence E. Richardson, for lots 1, 2, 3 and 4 of Sec. 27, T. 1 N., R. 14 W., S. B. M., containing 78.49-100 acres. Agreed pur. price, $———. Pur. price paid, $207.22. Int. paid $———. Deed issued May 25th, 1885, to Elijah H. Workman. Present owner of contract, ———. Patent No. 6. Issued Dec. 27th, 1883, for the land described above.

Contract No. 5059.

Issued Dec. 11th, 1885, to Presentacion B. de Haley, for the fractional SW. ¼ of Sec. 31, T. 1 N., R. 14 W., S. B. M., containing 162.40-100 acres. Agreed pur. price, $———. Pur. price paid, $1039.35. Int. paid, $———. Deed issued Jan. 13th, 1891, to A. Rosecrans. Present owner of contract, ———. Patent No. 6. Issued Dec. 27th, 1883, for the land described above.

Contract No. 5060.

Issued Dec. 11th, 1885, to Presentacion B. de Haley, for the fractional SE. ¼ of Sec. 31, T. 1 N., R. 14 W., S. B. M., containing 154 acres. Agreed pur. price, $462.00. Pur. price paid, $221.75. Int. paid, $129.35. Deed issued ———, to ———. Present owner of contract, ———. Patent No. 6. Issued Dec. 27th, 1883, for the land described above.

Contract No. 3805.

Issued July 14th, 1884, to B. Ballerino, for the S. ½ of SW. ¼ and lots 1 and 2 of Sec. 33, T. 1 N., R. 14 W., S. B. M., containing 128.80-100 acres. Agreed pur. price, $———. Pur. price paid, $385.19. Int. paid, $———. Deed issued Jan. 31st, 1888, to B. Ballerino. Present owner of contract, ———. Patent No. 6. Issued Dec. 27th, 1883, for the land described above.

Contract No. 11,344.

Issued July 9th, 1894, to B. Ballerino, for the S. ½ of SE. ¼ and lots 3 and 4 of Sec. 33, T. 1 N., R. 14 W., S. B. M., containing 120.40-100 acres. Agreed pur. price, $481.60. Pur. price paid, $123.29. Int. paid, $26.97. Deed issued ———, to ———. Present owner of contract, ———. Patent No. 6. Issued Dec. 27th, 1883, for the land described above.

Contract No. 4453.

Issued March 18th, 1885, to M. Kelleher and M. L. Wicks, for the E. ½ of Sec. 35, T. 1 N., R. 14 W., S. B. M., containing 320 acres. Agreed pur. price, $———. Pur. price paid, $1045.77. Int. paid, $———. Deed issued Sept. 18th, 1890, to Mrs. Julia E. Lord. Present owner of contract, ———. Patent No. 6. Issued Dec. 27th, 1883, for the land described above.

Contract No. 3835.

Issued July 31st, 1884, to S. A. Guiberson, for the NW. ¼ of Sec. 3, T. 3 N., R. 19 W., S. B. M., containing 160 acres. Agreed pur. price, $———. Pur. price paid,

$380.97. Int. paid, $———. Deed issued Oct. 19th, 1891, to S. A. Guiberson. Present owner of contract, ———. Patent No. 6. Issued Dec. 27th, 1883, for the land described above.

Contract No. 4177.

Issued Jan. 5th, 1885, to Alexander Phillips, for the E. ½ of NE. ¼ of Sec. 5, T. 3 N., R. 19 W., S. B. M., containing 79.95-100 acres. Agreed pur. price, $———. Pur. price paid, $239.85. Int. paid, $———. Deed issued Jan. 7th, 1885, to Alexander Phillips. Present owner of contract, ———. Patent No. 6. Issued Dec. 27th, 1883, for the land described above.

Contract No. 3834.

Issued July 31st, 1884, to John Cawelti, for the N. ½ of SE. ¼, and SW. ¼ and N. ½ of Sec. 15, T. 4 N., R. 19 W., S. B. M., containing 560 acres. Agreed pur. price, $———. Pur. price paid, $1792.00. Int. paid, $———. Deed issued Aug. 19th, 1889, to John Cawelti. Present owner of contract, ———. Patent No. 6. Issued Dec. 27th, 1883, for the land described above.

Contract No. 3832.

Issued July 31st, 1884, to J. A. Conaway, for the S. ½ of SE. ¼ of Sec. 15, T. 4 N., R. 19 W., S. B. M., containing 80 acres. Agreed pur. price, $———. Pur. price paid, $275. Int. paid, $———. Deed issued Aug. 10th, 1891, to J. A. Conaway. Present owner of contract, ———. Patent No. 6. Issued Dec. 27th, 1883, for the land described above.

Contract No. 6247.

Issued Jan. 14th, 1887, to Thomas F. Arundell, for the E. ½ of NE. ¼ and E. ½ of SE. ¼ of Sec. 17, T. 4 N., R. 19 W., S. B. M., containing 160 acres. Agreed pur. price, $———. Pur. price paid, $536.15. Int. paid, $———. Deed issued Aug. 10, 1893, to Thomas F. Arundell. Present owner of contract, ———. Patent No. 6. Issued Dec. 27th, 1883, for the land described above.

Contract No. 3852.

Issued Aug. 5th, 1884, to Thomas Rhodes, for the N. ½ and SW. ¼ of Sec. 21, T. 4 N., R. 19 W., S. B. M., containing 480 acres. Agreed pur. price, $———. Pur. price paid, $960. Int. paid, $———. Deed issued Aug. 6th, 1884, to Thomas Rhodes. Present owner of contract, ———. Patent No. 6. Issued Dec. 27th, 1883, for the land described above.

Contract No. 6953.

Issued Aug. 30th, 1887, to N. A. M. Kellogg, for the SE. ¼ of Sec. 21, T. 4 N., R. 19 W., S. B. M., containing 160 acres. Agreed pur. price, $———. Pur. price paid, $320. Int. paid, $———. Deed issued June 21st, 1887, to N. A. M. Kellogg. Present owner of contract, ———. Patent No. 6. Issued Dec. 27th, 1883, for the land described above.

Contract No. 3832.

Issued July 31st, 1884, to J. A. Conaway, for the NW. ¼ of Sec. 23, T. 4 N., R. 19 W., S. B. M., containing 160 acres. Agreed pur. price, $———. Pur. price paid,

$550.00. Int. paid, $———. Deed issued Aug. 10th, 1891, to J. A. Conaway. Present owner of contract, ———. Patent No. 6. Issued Dec. 27th, 1883, for the land described above,

Contract No. 3833.

Issued July 31st, 1884, to C. C. Riley, for the SW. ¼ of Sec. 23, T. 4 N., R. 19 W., S. B. M., containing 160 acres. Agreed pur. price, $———. Pur. price paid, $512.00. Int. paid, $———. Deed issued July 30th, 1889, to C. C. Riley. Present owner of contract, ———. Patent No. 6. Issued Dec. 27th, 1883, for the land described above.

Contract No. 10,243.

Issued Feb. 28th, 1890, to Charles T. Meredith, for the NW. ¼ of NW. ¼ of Sec. 25, T. 4 N., R. 19 W., S. B. M., containing 40 acres. Agreed pur. price, $———. Pur. price paid, $100. Int. paid, $———. Deed issued March 1st, 1890, to C. T. Meredith. Present owner of contract, ———. Patent No. ——. Issued ———, for ——— acres of land described above. Title acquired under decree of U. S. Circuit Court, May 21st, 1887.

Contract No. 9755.

Issued June 20th, 1888, to J. C. Stone, for the NW. ¼ of SE. ¼, E. ½ of SW. ¼ and SW. ¼ of SW. ¼ of Sec. 25, T. 4 N., R. 19 W., S. B. M., containing 160 acres. Agreed pur. price, $ ———. Pur. price paid, $500. Int. paid, $———. Deed issued July 16th, 1888, to J. C. Stone. Present owner of contract, ———. Patent No. ——.

Issued ——— for ——— acres of land described above. Title acquired under decree of U. S. Circuit Court, May 21st, 1887.

Contract No. 9980.

Issued Nov. 28th, 1880, to Pascual Real, for E. ½ of SE. ¼ of Sec. 25, T. 4 N., R. 19 W., S. B. M., containing 80 acres. Agreed pur. price, $400. Pur. price paid, $192.00. Int. paid, $112.00. Deed issued ——— to ———. Present owner of contract, ———. Patent No. ——. Issued ——— for ——— acres of land described above. Title acquired under decree of U. S. Circuit Court, Dec. 11th, 1885.

Contract No. 3991.

Issued Oct. 14th, 1884, to J. A. Conaway, for the NE. ¼ of Sec. 27, T. 4 N., R. 19 W., S. B. M., containing 160 acres. Agreed pur. price, $———. Pur. price paid, $551.32. Int. paid, $———. Deed issued Oct. 22d, 1891, to J. A. Conaway. Present owner of contract, ———. Patent No. 6. Issued Dec. 27th, 1883, for the land described above.

Contract No. 10,605.

Issued Nov. 28th, 1890, to Rush J. Ealy, for the NE. ¼ of NW ¼ and W. ½ of NW. ¼ of Sec. 27, T. 4 N., R. 19 W., S. B. M., containing 120 acres. Agreed pur. price, $300.00. Pur. price paid, $144. Int. paid, $84.00. Deed issued ——— to ———. Present owner of contract, ———. Patent No. 6. Issued Dec. 27th, 1883, for the land described above.

Contract No. 3363.

Issued March 24th, 1884, to Rush J. Ealy, for the SE. ¼ of NW. ¼ of Sec. 27, T. 4 N., R. 19 W., S. B. M., containing 40 acres. Agreed pur price, $———. Pur. price paid, $100.00. Int. paid, $———. Deed issued Mch. 25th, 1884, to Rush J. Ealy. Present owner of contract, ————. Patent No. 6. Issued Dec. 27th, 1883, for the land described above.

Contract No. 6300.

Issued Feb. 3d, 1887, to N. A. M. Kellogg, for the E. ½ of NE. ¼ and NE. ¼ of SE. ¼ of Sec. 29, T. 4 N., R. 19 W., S. B. M., containing 120 acres. Agreed pur. price, $———. Pur. price paid, $303.85. Int. paid, $———. Deed issued May 19th, 1887, to N. A. M. Kellogg. Present owner of contract, ————. Patent No. 6 Issued Dec. 27th, 1883, for the land described above.

Contract No. 6275.

Issued Jan. 17th, 1887, to S. A. Guiberson, for the SE. ¼ of NE. ¼ of Sec. 33, T. 4 N., R. 19 W., S. B. M., containing 40 acres. Agreed pur. price, $———. Pur. price paid, $40. Int. paid, $———. Deed issued Jan. 25th, 1887, to S. A. Guiberson. Present owner of contract, ————. Patent No. 6. Issued Dec. 27th, 1883, for the land described above.

Contract No. 9180.

Issued Jan. 19th, 1888, to Francis Bates, for lots 2, 3 and 4 of Sec. 33, T. 4 N., R. 19 W., S. B. M, containing 112.81-100 acres. Agreed pur. price, $282.03. Pur.

price paid, $198.52. Int. paid, $142.11. Deed issued ——— to ———. Present owner of contract Thomas R. Bard, by assignment Sept. 6th, 1889. Patent No. ——. Issued ——— for ——— acres of land described above. Title acquired under decree of U. S. Circuit Court, Feb. 8th, 1886.

Contract No. 10,034.

Issued Feb. 18th, 1889, to S. A. Guilberson, for the E. ½ of SE. ¼ of Sec. 33, T. 4 N., R. 19 W., S. B. M., containing 80 acres. Agreed pur. price, $———. Pur. price paid, $410.00. Int. paid, $———. Deed issued March 4th, 1889, to S. A. Guilberson. Present owner of contract, ———. Patent No. ——. Issued ———, for ——— acres of land described above. Title acquired under decree of U. S. Circuit Court, Feb. 8th, 1887.

Contract No. 3047.

Issued Jan. 14th, 1884, to M. L. Wicks, for the N. ½ of Sec. 7, T. 7 N., R. 13 W., S. B. M., containing 318.20-100 acres. Agreed pur. price, $———. Pur. price paid, $1047.95. Int. paid. $———. Deed issued Sept. 23d, 1889, to Thomas Menzies. Present owner of contract, ———. Patent No. 9. Issued Jan. 9th, 1885, for the land described above.

Contract No. 3040.

Issued Jan. 14th, 1884, to M. L. Wicks, for all of fractional section 1, T. 7 N., R. 14 W., S. B. M., containing 636.86-100 acres. Agreed pur. price, $———. Pur.

price paid, $2,147.24. Int. paid, $———. Deed issued Oct. 16th, 1890, to Mary M. Hughes. Present owner of contract, ———. Patent No. 9. Issued Jan. 9th, 1885, for the land described above.

Contract No. 3041.

Issued Jan. 4th, 1884, to M. L. Wicks, for all fractional Sec. 3, T. 7 N., R. 14 W., S. B. M., containing 631.20-100 acres. Agreed pur. price, $———. Pur. price paid, $2,109.57. Int. paid, $———. Deed issued June 11th, 1890, to Jennie L. Wicks. Present owner of contract, ———. Patent No. 9. Issued Jan. 9th, 1885, for the land described above.

Contract No. 3485.

Issued April 30th, 1884, to M. L. Wicks, for all fractional Sec. 5, T. 7 N., R. 14 W., S. B. M., containing 628.74-100 acres. Agreed pur. price, $———. Pur. price paid, $2,024.19. Int. paid, $———. Deed issued July 16th, 1889, to Fairmount Land and Water Co. Present owner of contract, ———. Patent No. 9. Issued Jan. 9th, 1885, for the land described above.

Contract No. 3486.

Issued April 30th, 1884, to M. L. Wicks, for the N. ½ of Sec. 7, T. 7 N., R. 14 W., S. B. M., containing 319.60-100 acres. Agreed pur. price, $———. Pur. price paid, $1,029.41. Int paid, $———. Deed issued July 16th, 1889, to M. L. Wicks. Present owner of contract, ———. Patent No. 9. Issued Jan. 9th, 1885, for the land described above.

Contract No. 3042.

Issued Jan. 14th, 1884, to M. L. Wicks, for the N. ½ of Sec. 9, T. 7 N., R. 14 W., S. B. M., containining 320 acres. Agreed pur. price, $———. Pur. price paid, $1024. Int. paid, $———. Deed issued Jan. 19th, 1889, to Mrs. C. L. True. Present owner of contract, ———. Patent No. 9. Issued Jan. 9th, 1885, for the land described above.

Contract No. 2888.

Issued Nov. 6th, 1883, to W. R. Hughes, for the N. ½ of Sec. 11, T. 7 N., R. 14W., S. B. M., containing 320 acres. Agreed pur. price, $———. Pur. price paid, $1,024. Int. paid, $———. Deed issued Nov. 16th, 1888, to W. R. Hughes. Present owner of contract, ———. Patent No. 9. Issued Jan. 9th, 1885, for the land described above.

Contract No. 3488.

Issued April 30th, 1884, to M. L. Wicks, for all of Sec. 1, T. 7 N., R. 15 W., S. B. M., containing 640 acres. Agreed pur. price, $———. Pur. price paid, $2,065.80. Int. paid, $———. Deed issued July 16th, 1889, to Fairmount Land and Water Co. Present owner of contract, ———. Patent No. 9. Issued Jan. 9th, 1885, for the land described above.

Plaintiff's Exhibit "H."

"F" (4-207.) W. J. M.

M. N. DEPARTMENT OF THE INTERIOR,

GENERAL LAND OFFICE,

Washington, D. C., June 20th, 1893.

I, Edw. A. Bowers, Acting Commissioner of the General Land Office, do hereby certify that the annexed copy of departmental decision of June 8, 1892, in the case of the Southern Pacific R. R. Co. vs. Milton McWharter, is a true and literal exemplification of the original on file in this office.

In testimony whereof, I have hereunto subscribed my name and caused the seal of this Office to be affixed, at the city of Washington, on the day and year above written.

[Seal] EDW. A. BOWERS,

Acting Commissioner of the General Land Office.

6731 b-2m.

Copy.

Vol. 15, 737.

Refer in reply to
this initial:

Address only the Commissioner
of the General Land Office.

DEPARTMENT OF THE INTERIOR,

Washington, D. C., June 8, 1892.

SOUTHERN PACIFIC R. R. CO.
vs.
MILTON McWHARTER.

The Commissioner of the General Land Office.

Sir: I have considered the appeal by the Southern Pacific Railroad Company from your decision of May 1, 1891, reversing the action of the local officers in rejecting the final proof tendered by Milton McWharter upon his pre-emption filing covering the NE. 4, Sec. 17, T. 17 S., R. 16 E., Visalia land district, California, for conflict with the grant for the Southern Pacific Railroad Company.

On January 3, 1867, said Company filed in your office a map showing the line of its proposed road, under the act of July 27, 1866 (14 Stat., 292), upon which a withdrawal was ordered March 22, 1867, of all the odd sections falling within both the primary and indemnity limits of the grant.

The 3d or granting section of the act of 1866 is as follows:

That there be, and hereby is, granted to the Atlantic and Pacific Railroad Company, its successors and assigns, for the purpose of aiding in the construction of said railroad and telegraph line to the Pacific Coast, and to secure the safe and speedy transportation of the mails, troops, munitions of war and public stores, over the route of said line of railway and its branches, every alternate section of public land, not mineral, designated

by odd numbers, to the amount of twenty alternate sections per mile, on each side of said railroad line, as said company may adopt, through the territories of the United States, and ten alternate sections of land per mile on each side of said railroad whenever it passes through any State, and whenever on the line thereof, the United States have full title, not reserved, sold, granted or otherwise appropriated, and free from pre-emption or other claims or rights, at the time the line of said road is designated by a plat thereof, filed in the office of the commissioner of the general land office; and whenever, prior to said time, any of said sections or parts of sections shall have been granted, sold, reserved, occupied by homestead settlers or pre-empted, or otherwise disposed of, other lands shall be selected by said company in lieu thereof, under the direction of the Secretary of the Interior, in alternate sections, and designated by odd numbers, not more than ten miles beyond the limits of said alternate sections, and not including the reserved numbers.

The 6th section provides:

That the President of the United States shall cause the lands to be surveyed for forty miles in width on both sides of the entire line of said road after the general route shall be fixed, and as fast as may be required by the construction of said railroad; and the odd sections of land hereby granted shall not be liable to sale or entry or pre-emption, before or after they are surveyed, except by said company, as provided in this act;

but the provisions of the act of September —, eighteen hundred and forty-one, granting pre-emption rights, and the acts amendatory thereof and of the act entitled "An act to secure homesteads to actual settlers on the public domain," approved May twenty, eighteen hundred and sixty-two, shall be, and the same are hereby, extended to all other lands on the line of said road when surveyed, excepting those hereby granted to said company.

The location of 1867 was designated as a map of general route.

Some question having arisen as to whether this location satisfied the requirements of the act of July 27, 1866 (supra), the joint resolution of June 28, 1870 (16 Stat., 382), authorized said company to construct its road and receive patents along the designated route indicated by the map filed in the General Land Office, January 3, 1867.

Without discussing the effect of said joint resolution of 1870, upon the location of 1867, i. e., in the matter of making definite that which before was but a general rule—no further action appears to have been taken by the company toward locating its road opposite this land, prior to August 15, 1887.

By departmental order of that date, the order of withdrawal on account of this grant, so far as it related to indemnity lands, was revoked and the lands not embraced in pending or approved selections were restored to entry, after due notice by publication. No selec-

tion of this tract having been made on January 16, 1888, one John H. Maxwell made homestead entry of the same, which entry he relinquished May 22, 1890, and same day McWharter filed his pre-emption declaratory statement for the land upon which he offered final proof, and upon the rejection of the same the present case arose.

On November 12, 1889, while this tract was covered by the entry by Maxwell, the company filed a map, showing the constructed line of its road opposite this tract.

This map was by you treated as the map of definite location, and the limits of the grant were re-adjusted thereto, the tract in question falling within the primary limits of the grant upon that adjustment.

The company in its appeal urges, under the authority of the decision in the case of the St. Paul and Pacific Railroad Company vs. Northern Pacific Railroad Company (139 U. S. 1), that the act making the grant withdrew the lands "in the forty-mile limits," and that no selection was required to save the company's right of selection, it being shown that there was a deficiency in the grant.

If this be so, then there was no authority to revoke the indemnity withdrawal. The question as to the authority to revoke the withdrawal of indemnity lands on account of this grant and others of a like nature was thoroughly considered by this Department, prior to the revocation of such withdrawals, and rights of

others attaching under such revocation have been repeatedly recognized by this Department as against the claim of the company. Southern Pacific R. R. Co. vs. Meyer, 9 L. D. 250; Southern Pacific R. R. Co. vs. Cline, 10 L. D. 31; Lane vs. Southern Pacific R. R. Co., 10 L. D. 454; Southern Pacific R. R. Co. vs. Meyer, 10 L. D. 444.

The matter would, therefore, seem to be stare decisis.

I deem it unnecessary to refer to the decision in the case of the St. Paul and Pacific Railroad vs. Northen Pacific Railroad Company (supra), to which counsel refer, further than to say that it has no application to the facts in this case.

I might remark in passing that if the construction insisted upon by counsel be correct, then a reservation exists ten miles beyond the indemnity limits of this grant in the States as it is limited to thirty miles on each side of the road in the selection of its indemnity.

The withdrawal contemplated by the 6th section of this act has been uniformly construed to relate only to the primary or granted lands, and the validity of any further withdrawal upon the filing of said map rests entirely upon executive action.

In the case of the Northern Pacific Railroad Company vs. Miller (7 L. D. 100), it was held that the 6th section of the act of July 2, 1864 (13 Stat. 365), similar to section 6 in the act under consideration, was a mandate effectually prohibiting the exercise of the executive authority to withdraw indemnity lands.

It is unnecessary at this time to pass upon the cor-

rectness of that proposition, but, after the revocation of the indemnity withdrawal, the lands were surely subject to appropriation as other public lands, and the entry by Maxwell was properly allowed.

This being so, the land was excepted from the operation of the grant, as said entry was a valid, subsisting claim at the date of the definite location, November 12, 1889, and upon the cancellation of Maxwell's entry the land embraced therein was restored to the public domain, free from any claim under the railroad grant. Kansas Pacific Railway Company vs. Dunmeyer, 113 U. S. 629.

Your decision is therefore affirmed; and the record in the case is herewith returned.

Very respectfully,

JOHN W. NOBLE,
Secretary, G. C.

[Endorsed]: U. S. Cir. Court, Southern District California. United States vs. S. P. R. R. Co., et al., 184. Master's and Examiner's Exhibit No. 35. E. H. Lamme, Master and Examiner in Chancery For Complainant. Filed Feb. 23, 1894. Wm. M. Van Dyke, Clerk. U. S. Circuit Court, 9th Circuit, So. Dist. of Cal. U. S. vs. S. P. R. R. Co., et al., No. 600 Plaintiff's Exhibit No. 36. Leo. Longley, Special Examiner. Filed Nov. 19, 1895. Wm. M. Van Dyke, Clerk.

Plaintiff's Exhibit "I."

"F" (4-207.) W. J. M.

M. N. DEPARTMENT OF THE INTERIOR,

GENERAL LAND OFFICE,

Washington, D. C., June 20th, 1893.

I, Edw. A. Bowers, Acting Commissioner of the General Land Office, do hereby certify that the annexed copy of departmental decision of December 12, 1890, in the case of William C. Morgan vs. Southern Pacific R. R. Company, is a true and literal exemplification of the original on file in this office.

In testimony whereof, I have hereunto subscribed my name and caused the seal of this Office to be affixed, at the city of Washington, on the day and year above written.

[Seal] EDW. A. BOWERS,

Acting Commissioner of the General Land Office.

6731 b-2m.

Copy.

11-866.

Refer in reply to
this initial:

Address only the Commissioner
of the General Land Office.

DEPARTMENT OF THE INTERIOR,

Washington, D. C., December 12, 1890.

WILLIAM C. MORGAN
vs.
SOUTHERN PACIFIC R. R. CO.

CONTEST BETWEEN CLAIMANT AND RAILROAD COMPANY.

The Commissioner of The General Land Office

Sir: I have considered the appeal of William C. Morgan from the decision of your office of January 2, 1889, rejecting his application to make homestead entry of the E.,½ of the NW.,¼ and W.,½ of the NE.,¼ of Sec. 9, T. 6 S., R. 2 W., S. B. M., Los Angeles, California.

Morgan's application to make entry of this land bears date November 20, 1888, and was rejected by the local officers "as being in conflict with the grant to Southern Pacific Railroad Company, March 3, 1871" (16 Stats.. 579).

On appeal, your office affirmed their decision, and Morgan now appeals to this Department, alleging the following errors:

1. In refusing to allow said entry;
2. In rejecting said application; and,
3. In holding that said land was reserved by reason of the application of the Southern Pacific Railroad Company to select said land as a part of its primary grant, when it appears that the land is outside of the primary limits.

The map of designated route was filed in your office April 3, 1871, in accordance with which lands were with-

drawn by letter of April 21, 1871, which was received at the local office on the 10th of the following May. On the 24th of July, 1876, a duly certified map was filed in the General Land Office showing the definite location and construction of that part of the road opposite the land in contest, and the lands were again withdrawn for the benefit of said grant. According to the first map, this land is within the indemnity limits of the grant; but, according to the second map, it is within the granted limits. Both maps show it to be either within the primary or indemnity limits, and it was "selected by the Southern Pacific Railroad Company, May 25, 1883, per list 11."

Morgan was advised that the said land was within this list and claimed by the railroad company at the time he made his application for a homestead entry of the same tract.

His application was rejected on the ground of the railroad company's claim. But he contends through counsel that the map of definite location, filed July 24, 1876, is of no validity, and that the land he claims is not within the primary limits of the grant.

The Supreme Court, in the case of Buttz v. Northern Pacific Railroad Company (119 U. S. 55-71), says, in effect, that the granting act not only contemplates a preliminary designation of the general route of the road, and the exclusion from sale, entry or pre-emption of the adjoining odd sections within forty miles on each side until the definite location is made, but it contemplates the filing by the company in the office of the Commissioner of the General Land Office of a map showing the definite

location of the line of its road, and limits the grant to such alternate odd sections as have not at that time been reserved, sold, granted or otherwise appropriated, and are free from pre-emption, grant or other claims or rights.

The grants to the Northern Pacific and Southern Pacific are almost identical. Under the decision of the Supreme Court in the case above, the map of July 24, 1876, showing the definite location of the line on which the Southern Pacific Railroad opposite the land in contest was constructed, is fully authorized, and according to this map the land is within the primary limits of the grant to the said company.

The decision of your office is therefore affirmed, and the papers in the case are herewith returned.

Very respectfully,

JOHN W. NOBLE,

Secretary,

G. C.

[Endorsed]: U. S. Cir. Court, Southern District California. United States vs. S. P. R. R. Co. et al. 184. Master's and Examiner's Exhibit No. 36. E. H. Lamme, Master and Examiner in Chancery. For Complainant. Filed Feb. 23, 1894. Wm. M. Van Dyke, Clerk. U. S. Circuit Court, 9th Circuit, So. Dist. of Cal. U. S. vs. S. P. R. R. Co. et al. No. 600. Plaintiff's Exhibit No. 37. Leo Longley, Special Examiner. Filed Nov. 19, 1895. Wm. M. Van Dyke, Clerk.

Plaintiff's Exhibit "J."

(4-207.)

"F" W. J. M.

M. N.

DEPARTMENT OF THE INTERIOR,

GENERAL LAND OFFICE,

Washington, D. C., January 23, 1894.

I, S. W. Lamoreux, Commissioner of the General Land Office, do hereby certify that the annexed copy of a letter is a true and literal exemplification of the original as it appears of record in this office.

In testimony whereof, I have hereunto subscribed my name and caused the seal of this office to be affixed, at the city of Washington, on the day and year above written.

[Seal] S. W. LAMOREUX,

Commissioner of the General Land Office.

6731 b-2m

Mrs. P. & Mrs. C.

Receipt ack'd. Dec. 10, 1884.

L. 30,846.

DEPARTMENT OF THE INTERIOR,

GENERAL LAND OFFICE,

Washington, D. C., November 23, 1874.

Register and Receiver, Visalia, Cal.

Gentlemen: I transmit herewith two diagrams which show the completed limits of the grant to the Atlantic and Pacific Railroad Company, in your district, prepared

from the maps of definite location of the road filed in the Department, August 15th, 1872, and although only recently accepted by the Department, the rights of the company must attach to the lands from that date.

You will, accordingly, withhold from sale or entry, all the odd-numbered sections within the thirty-mile limits shown on the diagrams, and hold the even sections within the twenty-mile limits at $2.50 per acre.

The even sections between the twenty and thirty-mile limits, are not affected by the grant. Be pleased to promptly acknowledge the receipt of this letter and diagrams.

Very respectfully,

S. S. BURDETTE,
Commissioner.

[Endorsed]: 879. Department of the Interior, L. & R. R. Received Jan. 24, 1894. Ex. 53. U. S. Cir. Court, Southern District California. United States vs. S. P. R. R. Co. et al. 184. Master's and Examiner's Exhibit No. 53. E. H. Lamme, Master and Examiner in Chancery. For Complainant. Filed Feb. 23, 1894. Wm. M. Van Dyke, Clerk. U. S. Circuit Court, 9th Circuit, So. Dist. of Cal. U. S. vs. S. P. R. R. Co. et al. No. 600: Plaintiff's Exhibit No. 43. Leo Longley, Special Examiner. Filed Nov. 19, 1895. Wm. M. Van Dyke, Clerk.

Plaintiff's Exhibit "K."

"F" (4-207.) W. J. M.

M. N.

DEPARTMENT OF THE INTERIOR,

GENERAL LAND OFFICE,

Washington, D. C., January 23, 1894.

I, S. W. Lamoreux, Commissioner of the General Land Office, do hereby certify that the annexed copy of a letter is a true and literal exemplification of the original as it appears of record in this office.

In testimony whereof, I have hereunto subscribed my name and caused the seal of this office to be affixed, at the city of Washington, on the day and year above written.

[Seal] S. W. LAMOREUX,

Commissioner of the General Land Office.

6731 b-2m

Mrs. P. & Mrs. C.

Rect. ack'd. Decr. 9/74.

DEPARTMENT OF THE INTERIOR,

GENERAL LAND OFFICE,

Washington, D. C., November 23, 1874.

Register and Receiver, San Francisco, Cal.

Gentlemen: I transmit herewith a diagram showing the completed limits of the grant to the Atlantic & Pacific Railroad Company, in your district, prepared from the map of definite location filed, in the Department, August 15, 1872, by the company, and although only recently accepted, their rights must attach to the lands from that date.

You will, accordingly, withhold from sale or entry all the odd-numbered sections within the thirty-mile limits shown on the diagram, and hold the even sections within the twenty-mile limits at $2.50 per acre.

The even sections between the twenty and thirty-mile limits are not affected by the grant.

Be pleased to promptly acknowledge the receipt of this letter and diagram.

Very respectfully,

S. S. BURDETTE,
Commissioner.

[Endorsed]: 879. Department of the Interior. Received Jan. 24, 1894. Ex. 54. U. S. Cir. Court, Southern District California. United States vs. S. P. R. R. Co. et al. 184. Master's and Examiner's Exhibit No. 54. E. H. Lamme, Master and Examiner in Chancery. For Complainant. Filed Feb. 23, 1894. Wm. M. Van Dyke, Clerk. U. S. Circuit Court, 9th Circuit, So. Dist. of Cal. U. S. vs. S. P. R. R. Co. et al. No. 600. Plaintiff's Exhibit No 42. Leo Longley, Special Examiner. Filed Nov. 19, 1895. Wm. M. Van Dyke, Clerk.

Plaintiff's Exhibit "L."

M. N. (4-207 a.) W. J. M.
F.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., Dec. 26th, 1893.

I, S. W. Lamoreux, Commissioner of the General Land Office, do hereby certify that the annexed letter transmit-

ting a diagram to the Register and Receiver, at Los Angeles, and ordering a withdrawal of lands in accordance therewith, is a true copy of the original, of record in this office, while the annexed diagram is a true and literal examplification of the original of the one referred to in said letter, as it appears on file in this office.

In testimony whereof, I have hereunto subscribed my name, and caused the seal of this office to be affixed, at the city of Washington, on the day and year above written.

[Seal] S. W. LAMOREUX,
Commissioner of General Land Office.

8498 b-lm
Received at Local office Dec. 10, 1874,
M. 89,049.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., November 23, 1874.

Register and Receiver, Los Angeles, Cal.

Gentlemen: I transmit, herewith, two diagrams, which show the completed limits of the grant, to the Atlantic and Pacific Railroad Company in your district, prepared from the maps of definite location of the road filed in the Department, August 15, 1872, and, although only recently accepted, the rights of the company must attach to the lands from that date.

You will, accordingly, withhold from sale or entry, all the odd-numbered sections within the thirty-mile limits shown on the diagrams, and hold the even sections within the twenty-mile limits at $2.50 per acre.

The even sections between the twenty and thirty-mile limits are not affected by the grant.

Be pleased to promptly acknowledge the receipt of this letter and diagrams.

Very respectfully,

S. S. BURDETTE,
Commissioner.

[Endorsed]: U. S. Cir. Court, Southern District California. United States vs. S. P. R. R. Co. et al. 184. Master's and Examiner's Exhibit No. 49. E. H. Lanme, Master and Examiner in Chancery. For Complainant. Filed Feb. 23, 1894. Wm. M. Van Dyke, Clerk. U. S. Circuit Court, 9th Circuit, So. Dist. of Cal. U. S. vs. S. P. R. R. Co. et al. No. 600. Plaintiff's Exhibit No. 51. Leo. Longley, Special Examiner. Filed Nov. 19, 1895. Wm. M. Van Dyke, Clerk.

Plaintiff's Exhibit ——.

United States of America,
Southern District of California. } ss.

I, Wm. M. Van Dyke, clerk of the Circuit Court of the United States for the Southern District of California, do hereby certify that I have carefully compared the map and papers hereto annexed with an original exhibit filed in my office this November 19, 1895, said original exhibit being described as Defendants' Exhibit No. 38 in the case entitled "The United States of America, Complainants, vs. The Southern Pacific Railroad

Company, et al, Defendants, No. 587," and being further described as Defendants' Exhibit No 319 in the case entitled "The United States of America, Complainants, vs. Southern Pacific Railroad Company, et al., Defendants, No. 600," before Leo Longley, Special Examiner; and I certify that said map and papers hereto annexed are a full, true and correct copy of said exhibit and of the whole thereof.

In testimony whereof, I have hereunto set my hand and affixed the seal of said Circuit Court, this nineteenth day of November, A. D. 1895.

[Seal] WM. M. VAN DYKE,
Clerk.

F.
S. S. M.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., Aug. 8, 1895.

I, E. F. Best, Acting Commissioner of the General Land Office, do hereby certify that the annexed copies are true and literal exemplifications of the originals on file, or of record in this office.

In testimony whereof I have hereunto subscribed my name, and caused the seal of this office to be affixed,

at the city of Washington, on the day and year above written.

E. F. BEST,

Acting Commissioner of General Land Office.

[Seal of Department of the General Land Office.]

Refer in reply to
this initial:

Address only the Commissioner
of the General Land Office.

DEPARTMENT OF THE INTERIOR,

GENERAL LAND OFFICE,

Washington, D. C., Sept. 17, 1874.

Register and Receiver, Los Angeles, California.

Gentlemen: The Southern Pacific Railroad Company, of California, having filed a map of definite location of five sections of ten miles each of its branch line, under the act of March 3, 1871, commencing at a point in the northwest one-quarter, section 3, township 2 north, range 15 west, and ending at a point in the northwest one-quarter, section 27, township 1 south, range 9 west, I herewith transmit a diagram of the twenty and thirty-mile limits of the land grant in your district, and you will be governed by these limits in the adjustment of said grant.

Please acknowledge the receipt of said diagram.

Very respectfully,

S. S. BURDETT,
Commissioner.

[Endorsed]: United States vs. Southern Pacific Company. No. 587. Defendants' Exhibit No. 38. Leo Longley, Special Examiner. Filed Nov. 19, 1895. Wm. M. Van Dyke, Clerk. United States vs. Southern Pacific Company. No. 600. Defendants' Exhibit No. 319. Leo Longley, Special Examiner. Filed Nov. 19, 1895. Wm. M. Van Dyke, Clerk.

Plaintiff's Exhibit ——.

Southern District of California. }
United States of America, } ss.

I, Wm. M. Van Dyke, clerk of the Circuit Court of the United States for the Southern District of California, do hereby certify that I have carefully compared the map and papers hereto annexed with an original exhibit filed in my office this November 19, 1895, said original exhibit being described as Defendants' Exhibit No. 39 in the case entitled, "The United States of America, Complainants, vs. The Southern Pacific Railroad Company, et al., Defendants, No. 587," and being further described as Defendants' Exhibit No. 320, in the case entitled "The United States of America, Complainants, vs. The Southern Pacific Railroad Company et al., Defendants, No. 600," before Leo Longley, Special Examiner; and I certify that said map and papers hereto annexed are a full, true and correct copy of said exhibit and of the whole thereof.

In testimony whereof, I have hereunto set my hand

and affixed the seal of said Circuit Court, this nineteenth day of November, A. D. 1895.

[Seal] WM. M. VAN DYKE,
Clerk.
W. J. M.

F.
S. S. M.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., Aug. 8, 1895.

I, E. F. Best, Acting Commissioner of the General Land Office, do hereby certify that the annexed copies are true and literal exemplifications of the originals on file, or of record in this office.

In testimony whereof I have hereunto subscribed my name, and caused the seal of this office to be affixed, at the city of Washington, on the day and year above written.

E. F. BEST,
Acting Commissioner of General Land Office.

[Seal of Department of the General Land Office.]

Refer in reply to
this initial:
Address only the Commissioner
of the General Land Office.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., Dec. 20, 1875.

Register and Receiver, Los Angeles, California.

Gentlemen: A duly certified map having been filed in this office in compliance with law, showing the defi-

nite location and construction of the second section of fifty miles of the Southern Pacific Railroad branch line under the act of March 3, 1871, from a point in the northeast one-quarter section 27, township 1 south, range 9 west, where the first fifty-mile section ended, to a point in southwest one-quarter section 4, township 3 south, range 1 west, S. B. M., I transmit herewith a diagram showing the twenty and thirty-mile limits of the land grant established in accordance therewith. And you are hereby directed to withhold from sale or entry all the odd sections falling within those limits, and not excepted by the granting act. The even sections falling within the definite twenty-mile limits will be held at the double minimum price of $2.50 per acre. The withdrawal of the odd sections here directed, and increase in price of the even ones takes effect from Nov. 15, 1875, the date the map was received at this office. Please acknowledge the date of receipt of this letter with diagram.

Very respectfully,

S. S. BURDETT,
Commissioner.

[Endorsed]: United States vs. Southern Pacific Company. No. 587. Defendants' Exhibit No. 39. Leo Longley, Special Examiner. Filed Nov. 19, 1895. Wm. M. Van Dyke, Clerk. United States vs. Southern Pacific Company. No. 600. Defendants' Exhibit No. 320. Leo Longley, Special Examiner. Filed Nov. 19, 1895. Wm. M. Van Dyke, Clerk.

Plaintiff's Exhibit ——.

United States of America,
Southern District of California. } ss.

I, Wm. M. Van Dyke, clerk of the Circuit Court of the United States for the Southern District of California, do hereby certify that I have carefully compared the map and papers hereto annexed with an original exhibit filed in my office this November 19, 1895, said ——— being described as Defendants' Exhibit No. 40, in the case entitled, The United States of Ameri ca, Complainants, vs. The Southern Pacific Railroad Company, et al., Defendants, No. 587," and being further described as Defendants' Exhibit No. 321, in the case entitled "The United States of America, Complainants, vs. The Southern Pacific Railroad Company, et al., Defendants, No. 600," before Leo Longley, Special Examiner; and I certify that said map and papers hereto annexed are a full, true and correct copy of said exhibit and of the whole thereof.

In testimony whereof, I have hereunto set my hand and affixed the seal of said Circuit Court, this nineteenth day of November, A. D. 1895.

[Seal] WM. M. VAN DYKE,
Clerk.

F. W. J. M.
S. S. M.

DEPARTMENT OF THE INTERIOR,

GENERAL LAND OFFICE,

Washington, D. C., Aug. 8, 1895.

I, E. F. Best, Acting Commissioner of the General Land Office, do hereby certify that the annexed copies are true and literal exemplifications of the originals on file, or of record in this office.

In testimony whereof I have hereunto subscribed my name, and caused the seal of this office to be affixed, at the city of Washington, on the day and year above written.

E. F. BEST,

Acting Commissioner of General Land Office.

[Seal of Department of the General Land Office.]

Refer in reply to
this initial:

Address only the Commissioner
of the General Land Office.

DEPARTMENT OF THE INTERIOR,

GENERAL LAND OFFICE,

Washington, D. C., August 19, 1876.

Register and Receiver, Los Angeles, California.

Gentlemen: A duly certified map was filed in this office on the twenty-fourth ultimo in compliance with law, showing the definite location and construction of the third section of fifty miles of the Southern Pacific Railroad, branch line, under the act of March 3, 1871, from a point in the southwest one-quarter, section 4, town-

ship 3 south, range 1 west, where the second fifty mile section ended, to a point in the southwest one-quarter, section 24, township 5 south, range 7 east, San Bernardino meridian, which received the approval of the President on the twenty-first of July, 1876, I transmit herewith a diagram, showing the twenty and thirty-mile limits of the land grant established in accordance therewith, and you are hereby directed to withhold from sale or entry all the odd sections falling within those limits not already withdrawn, and not excepted by the granting act upon the general route, and to restore to preemption and homestead entry the lands heretofore withdrawn, but now falling without the thirty-mile limits as definitely fixed.

The even sections falling within the definite twenty-mile limts will be held at the double minimum price, but those heretofore held at that price, now falling without will be reduced in price to $1.25 per acre, from the date of the receipt of this letter.

The withdrawal of the odd sections here directed, and increase in price of the even ones, will take effect from the same date.

Be pleased to acknowledge the date of receipt of this letter and diagram.

Very respectfully,

U. J. BAXTER,
Acting Commissioner.

[Endorsed]: United States vs. Southern Pacific Company. No. 587. Defendants' Exhibit No. 40. Leo Longley, Special Examiner. Filed Nov. 20, 1895. Wm.

M. Van Dyke, Clerk. United States vs. Southern Pacific Company. No. 600. Defendants' Exhibit No. 321. Leo Longley, Special Examiner. Filed Nov. 20, 1895. Wm. M. Van Dyke, Clerk.

Plaintiff's Exhibit ——.

United States of America,
Southern District of California. } ss.

I, Wm. M. Van Dyke, clerk of the Circuit Court of the United States for the Southern District of California, do hereby certify that I have carefully compared the map and papers hereto annexed with an original exhibit filed in my office this November 19, 1895, said original exhibit being described as Defendants' Exhibit No. 41 in the case entitled "The United States of America, Complainants, vs. The Southern Pacific Railroad Company, et al., Defendants, No. 587," and being further described as Defendants' Exhibit, No. 322, in the case entitled "The United States of America, Complainants, vs. The Southern Pacific Railroad Company, et al., Defendants, No. 600," before Leo Longley, Special Examiner; and I certify that said map and papers hereto annexed are a full, true and correct copy of said exhibit and of the whole thereof.

In testimony whereof, I have hereunto set my hand and affixed the seal of said Circuit Court, this nineteenth day of November, A. D. 1895.

[Seal] WM. M. VAN DYKE,
Clerk.

F. W. J. M.
S. S. M.

Department of the Interior.

General Land Office.

Washington, D. C., Aug. 8, 1895.

I, E. F. Best, Acting Commissioner of the General Land Office, do hereby certify that the annexed copies are true and literal exemplifications of the originals on file, or of record in this office.

In testimony whereof, I have hereunto subscribed my name, and caused the seal of this office to be affixed, at the city of Washington, on the day and year above written.

E. F. BEST,

Acting Commissioner of General Land Office.

(Seal of Department of the General Land Office.)

Refer in reply to
this initial:

Address only the Commissioner
of the General Land Office.

Department of the Interior.

General Land Office.

Washington, D. C., March 27, 1877.

Register and Receiver, Los Angeles, California.

Gentlemen: A duly certified map was filed in this office on the sixth instant, in compliance with law, showing the definite location and construction of the fourth section, seventy-eight and fifty-nine one-hundredths miles of the Southern Pacific Railroad, branch line, under the act of March 3, 1871, commencing at a point in the northwest one-quarter section 3, township 2

north, range 15 west, and ending at a point in the northeast one-quaraer section 17, township 11 north, range 12 west, San Bernardino meridian which received the approval of the President, the first instant.

I transmit herewith a diagram showing the twenty and thirty-mile limits of the land grant established in accordance therewith, and you are hereby directed to withhold from sale or entry all the odd sections falling within those limits not already withdrawn, and not excepted by the granting act upon the general route.

The even sections falling within the definite twenty-mile limits, will be held at the double minimum price of $2.50 per acre.

The withdrawal of the odd sections here directed, and the increase in price of the even sections will take effect from the date of the receipt of this letter and diagram, of which acknowledgment is respectfully requested.

Very respectfully,

J. A. WILLIAMSON,
Commissioner.

[Endorsed]: United States vs. Southern Pacific Company. No. 587. Defendants' Exhibit No. 41. Leo. Longley, Special Examiner. Filed Nov. 19, 1895. Wm. M. Van Dyke, Clerk. United States vs. Southern Pacific Company. No. 600. Defendants' Exhibit No. 322. Leo Longley, Special Examiner. Filed Nov. 19, 1895. Wm. M. Van Dyke, Clerk.

Defendant's Exhibit "A."

In the Superior Court of the County of Ventura, State of California.

In the Matter of the Estate of ALEXANDER PHILLIPS,

Deceased.

Order Assigning the Whole Estate to Widow.

The petition of Mary Phillips, widow of Alexander Phillips, deceased, coming on to be heard on this day, and it appearing to the Court that due and proper notice has been given by the clerk of this court according to law and the practice of this court, and that said matter was set for hearing on the 5th day of May, 1897, and that the same was duly and regularly continued from that date until the 15th day of May, 1897, and on said date was further continued until this 5th day of June, 1897; and

It appearing to the Court that the inventory and appraisement of the property of the estate of the above-named decedent has been heretofore duly returned and filed herein; and

Whereas, it appeared therefrom that the whole estate of said decedent did not exceed in value the sum of fifteen hundred dollars; and

Whereas, it appeared that the decedent had left a widow and minor children, thereupon this Court issued its order requiring all persons interested in said estate to appear and show cause why the whole of said estate should not be assigned to the family of the decedent,

and said matter coming on regularly for hearing on this day, and it appearing that the facts above stated are true and it being proven that due and legal notice of this proceeding has been given to all persons interested in said estate, and no sufficient cause being shown why the said property should not be so assigned; and

It appearing that the family of said decedent consists of the following persons, viz: Mary Phillips, his widow, Ruth Phillips, Orphie Phillips and Lee Phillips, minor children; and

It appearing that the expenses of the last illness of decedent, all the funeral expenses and all the expense of administration are paid:

It is therefore ordered that the whole of the estate of said decedent be assigned to said Mary Phillips.

The property of said estate being described as follows, to wit:

Fractional east one-half (½) of the northeast one-fourth (¼) of section five (5), township three (3) north, range nineteen (19) west, S. B. M., situate in the county of Ventura, State of California, and containing seventy-nine and 95/100 (79.95) acres. The same being the home of the deceased and of his family and the place where the family of deceased now resides.

Also the following-described personal property: Three work horses, two colts, one cow, two yearling calves, two two-year old, one calf, forty-four stands of bees, one small honey extractor and tank, three plows,

one wagon, one set harness, four dozen chickens, personal clothing, household and kitchen furniture.

W. S. DAY,
Superior Judge.
Presiding.

Done in open court this 5th day of June, 1897.

State of California, } ss.
County of Ventura. }

I, A. S. Kenagy, county clerk and ex-officio clerk of the Superior Court do hereby certify the foregoing to be a full, true and correct copy of the original on file in my office.

Witness my hand and seal of the Superior Court, this 5 day of June, 1897.

[Seal] A. S. KENAGY,
County Clerk.
By A. R. Crawford,
Deputy.

[Endorsed]: No. 2086. Filed Jun. 5, 1897. A. S. Kenagy, Clerk. By A. R. Crawford, Deputy Clerk.

[Endorsed]: No. 2086. Estate of Alex Phillips. Order Assigning Whole of Estate to Widow, Mary Phillips. Recorded at the request of Mrs. Alexander Phillips, June 5, A. D. 1897, at ——— min, past 3 o'clock P. M., in Book 52 of Deeds, page 79, Records of Ventura Co., Cal. Amos Browne, County Recorder. By Jno. B. Wagner, Deputy Recorder. Mail Fillmore. Compared. 1.20 Pd.

[Endorsed]: Defendants' Exhibit "A." Filed May 15, 1900. A. M. Cates, Special Examiner and Stenographer.

Defendant's Exhibit "B."

(Copy)

No. 12,876.

B

RECORDER'S CERTIFICATE.

State of California,
County of San Bernardino. } ss.

I, J. F. Johnson, Jr., County Recorder of the county of San Bernardino, State of California, hereby certify that the records of the Recorder's office of said county show that the United States issued a patent on the 4th Apl., 1879, to the Southern Pacific Railroad Company, a corporation, for the property hereinafter described; that said patent was duly recorded in said recorder's office in the 16th day of February, 1881, in book "A" of Patents, page 412, and as shown by the records of said Recorder's office, all interest so acquired by said corporation in the following described property is, by mesne conveyances and by proceedings had in the Superior Court of San Bernardino county, now vested in the

Bank of America, a Corporation.

as more fully appears by the chain of title hereinafter shown:

DESCRIPTION.

That certain real property situated in the county of San Bernardino, State of California, described as follows: Lots 808, 809, 810, 811, 812, 813, 814, 859, 860, 861, 862, 863, 864, 865, 866 and 867, of Ontario, as per plat thereof recorded in Book 11 of Maps at page 6 of San Bernardino County Records, in the office of the County recorder thereof.

Said lands are further described according to governmental subdivisions, as follows, to wit:

North half of the northeast quarter (N. ½ of N. E. ¼), containing eighty (80) acres;

Also, the north half of the southeast quarter of the northeast quarter (N. ½ of S. E. ¼ of N. E. ¼), containing twenty (20) acres;

Also, a strip of land described as commencing at a point in the northeast corner of the southwest quarter of the northeast quarter (S. W. ¼ of N. E. ¼) of section twenty-one (21), in township one (1) south, range seven (7) west, San Bernardino base and meridian, and running thence south along the quarter section line, ten (10) chains to a point; thence west, and at right angles with said last-named line, two chains and fifty links (2.50 ch.) to a point; thence north ten (10) chains to a point in the dividing line between the north and south halves of the northeast quarter (N. E. ¼) of said section 21, thence east two chains and fifty links (2.50 ch), to the place of commencement, and containing two and fifty-hundredths (2.50) acres;

Also, the northeast quarter of the northwest quarter (N. E. ¼ of N. W. ¼), containing forty (40) acres;

Also, the east three-fourths of the northwest quarter of the northwest quarter (E. ¾ of N. W. ¼ of N. W. ¼), containing thirty (30) acres.

All of the foregoing described lands being situated in section twenty-one (21), township one (1) south of range seven (7) west, San Bernardino base and meridian.

In witness whereof, I have hereunto set my hand and affixed my official seal, this 4th day of May, 1899.

[County Recorder's Seal] J. F. JOHNSON, Jr.,
County Recorder.

(10c. Revenue Stamp duly canceled.)

INSTRUMENTS AFFECTING THE TITLE TO CERTAIN LANDS IN ONTARIO COLONY OWNED BY THE BANK OF AMERICA.

1.

United States of America

to

The Southern Pacific Railroad Company of California.

PATENT.—Dated 4th Apr., 1879. Recorded 18th Feb., 1881. Liber A, Patents, page 412.

Section 21, T. 1 S., R. 7 W., and other property.

2.

George Chaffey and William B. Chaffey

and

Cyrus T. Mills and M. L. Wicks.

AGREEMENT TO CONVEY.—Dated 31st Aug., 1882. Recorded 12th Oct., 1882. Liber C, Agreements, page 462.

All of Sec. 21, T. 1 S., R. 7 W., and other property.

3.

C. T. Mills and M. L. Wicks

to

George Chaffey, Jr., and W. B. Chaffey.

DEED.—Dated 19th Jan., 1883. Recorded 10th Feb., 1883. Liber 32, deeds, pg. 323.

Section 21, T. 1 S., R. 7 W., with other property.

4.

George Chaffey, Jr., W. B. Chaffey

to

George Chaffey, Jr., Wm. B. Chaffey, John E. Pater, J. S. Slauson and R. M. Widney, as trustees of the express trust hereinafter set out.

TRUST DEED.—Dated 16th July, 1883. Recorded 18th July, 1883. Liber 34, Deeds, pg. 216. Re-recorded 21st Mch., 1892. Liber 150, Deeds, pg. 274.

Section 21, T. 1 S., R. 7 W., and other property.

5.

Geo. W. Chaffey, Jr., W. B. Chaffey

to and with

C. T. Mills and M. L. Wicks.

AGREEMENT.—Dated ————. Recorded 23d Apl. 1886. Liber E, Agreements, page 467.

Section 21, T. 1 S., R. 7 W., and other property.

6.

Geo. Chaffey ,Jr., W. B. Chaffey

to

Geo. Chaffey, Jr., W. B. Chaffey, J. E. Plater, J. S. Slauson and R. M. Widney, as Trustees of the express trust.

ASSIGNMENT.—Liber E, Agreements, page 467. Recorded 23d Apl., 1886.

Assignment of agreements recorded in liber E of Agreements, page 467.

7.

George Chaffey, Jr., Wm. B. Chaffey, J. S. Slauson, John E. Plater and R. M. Widney, as Trustees,

to

H. L. MacNeil, O. S. Picher, D. McFarland, Lyman Stewart and Charles Frankish, Trustees.

AGREEMENTS TO CONVEY.—Dated 3d Mch., 1886. Recorded 23d Apl. 1886. Liber E, Agreements, page 471.

Lots 808, 809, 810, 811, 812, 813, 814, 859, 860, 861, 862, 863, 864, 865, 866 and 867, of Ontario, with other property.

8.

J. E. Pater, J. S. Slauson and R. M. Widney, Trustees, and H. L. Macneil, C. S. Picher, D. McFarland, Lyman Stewart and Chas. Frankish, Trustees,

to

Ontario Land and Improvement Company, a Corporation.

DEED.—Dated 5th Aug., 1887. Recorded 19th Aug., 1887. Liber 64, Deeds, page 5.

Lots 808, 809, 810, 811, 812, 813, 814, 859, 860, 861, 862, 863, 864, 865, 866 and 867, of Ontario, with other property.

9.

Southern Pacific Railroad Company

to

Pomona Land and Water Co.

DEED.—Dated 8th Aug., 1887. Recorded 19th Aug., 1887. Liber 51, Deeds, pg. 65.

North ½ of Section 21, T. 1 S., R. 7 W.

10.

Pomona Land and Water Co.

to

J. E. Plater.

DEED.—Dated 5th May, 1888. Recorded 2d June, 1888. Liber 76, Deeds, pg. 212.

Section 21, T. 1 S., R. 7 W.

11.

John E. Plater

to

Ontario Land and Improvement Company.

DEED.—Dated 28th May, 1888. Recorded 2d June, 1888. Liber 78, Deeds, pg. 194.

Section 21, T. 1 S., R. 7 W.

12.

Ontario Land and Improvement Company, a Corporation,

to

John E. Plater, Trustee.

DEED.—Dated 23d Dec., 1890. Recorded 26th Jan., 1891. Liber 127, Deeds, pg. 101.

Lots 808, 809, 810, 811, 812, 813, 814, 859, 860, 861, 862, 863, 864, 865, 866 and 867, of Ontario, with other property.

13.

John E. Plater, Trustee, and Sallie J. Plater, his wife,

to

Bank of America.

DEED.—Dated 15th Aug., 1895. Recorded 17th Aug., 1895. Liber 218, Deeds, pg. 242.

Lots 808, 809, 810, 811, 812, 813, 814, 859, 860, 861, 862, 863, 864, 865, 866, and 867, of Ontario, with other property.

14.

Bank of America

vs.

Stephen T. Bundy, Mrs. A. E. Bundy, Chas. S. Hassfurther, Roy Steinberg.

LIS PENDENS.—Recorded 21st Aug., 1895. Liber F, Lis Pendens, page 73.

Notice of action to quiet title to same premises described under and from Plater and wife to Bank of America as set out in Paragraph No. 13.

15.

Bank of America

vs.

Stephen T. Bundy, Mrs. A. E. Bundy, Chas. S. Hassfurther, Roy Steinberg.

ACTION.—Case No. 6172.

Action referred to in foregoing Lis Pendens. Complaint filed 21st August, 1895.

16.

Bank of America (a Corporation),

Plaintiff,

vs.

Stephen T. Bundy, Mrs. A. E. Bundy, his wife, Charles S. Hassfurther, Roy Sternberg (substituted in lieu of Roy Steinberg), W. H. Hargrave (substituted in lieu of John Doe), Richard Roe, Samuel Hoe, Mary Doe, Susan Roe and Jane Doe,

Defendants (dismissed as to fictitious defendants).

JUDGMENT.—Number 6172. Recorded 4th Jan., 1899, at 4:59 P. M. Liber 262, Deeds, pg. 39.

Said judgment recites, among other things: "That neither of the aforesaid defendants, Stephen T. Bundy, Mrs. A. E. Bundy (his wife), Charles S. Hassfurther, Roy Steinberg (also known as Roy Sternberg), and W. H. Hargrave, has any estate or interest whatsoever in or any lien upon the land and premises hereinafter described (being same premises set out in paragraph No. 13) nor any part thereof, and that they and each of them be forever enjoined and debarred from asserting any claim

or lien whatsoever in or to the same, adverse to the plaintiff."

[Endorsed]: Filed Dec. 12, 1898, at 48 min. past 4 P. M. J. B. Parazette, Clerk, by L. A. Pfeiffer, Deputy Clerk. Docketed Dec. 19, 1898. Entered Dec. 16, 1898, in book 15, page 129. By W. H. Miller, Deputy Clerk.

[Endorsed]: No. 878. In the United States Circuit Court, Southern District of Calif. The United States of America vs. S. P. R. R. Co., et al. Proof and Chain of Title of Bank of America. R. H. F. Variel, Attorney at Law, Los Angeles, Cal., Attorney for said deft.

[Endorsed]: Defendant's Exhibit "B." Filed May 15, 1900. A. M. Cates, Special Examiner and Stenographer.

Defendant's Exhibit "C."

(Copy)

No. 12,877

B

RECORDER'S CERTIFICATE.

County of San Bernardino. }
State of California, } ss.

I, J. F. Johnson, Jr., County Recorder of the County of San Bernardino, State of California, hereby certify that the records of the Recorder's Office of said county show that the United States issued a patent on the 4th April, 1879, to the Southern Pacific Railroad Company, a corporation, for the property hereinafter described; that said patent was duly recorded in said Recorder's of-

fice on the 18th day of February, 1881, in Book A of Patents, page 412, and as shown by the records of said Recorder's Office, all interest so acquired by said corporation in the following-described property is, by mesne conveyances and by proceedings had in the Superior Court of San Bernardino County, now vested in

H. L. Macneil,

as more fully appears by the chain of title hereinafter shown:

DESCRIPTION:

That certain real property situated in the County of San Bernardino, State of California, described as follows: Lots 868, 869, 870, 871, 872, 917, 918, 919, 920, 921, 922, 923, 924, 925, 926, 927, 928, 929 and 930 of Ontario, as per plat recorded in book 6 of Maps, page 11, of said County Records.

Said lands are further described according to Governmental subdivisions, as follows, to wit:

Southwest quarter of the northeast quarter (S. W. ¼ of N. E. ¼), containing 40 acres; except a strip of land described as commencing at a point in the northeast corner of the southwest quarter of the northeast quarter (S. W. ¼ of N. E. ¼) of section twenty-one (21), in township one (1) south, range seven (7) west, San Bernardino base and meridian, and running thence south along the quarter section line, ten (10) chains to a point; thence west, and at right angles with said last-named line, two chains and fifty links (2.50 ch.) to a point; thence north ten (10) chains to a point in the dividing line between the north and south halves of the northeast quarter (N. E. ¼) of said section 21, thence east two chains and fifty

links (2.50 ch.) to the place of commencement, and containing two and fifty-hundredths (2.50) acres;

The south half of the southeast quarter of the northeast quarter (S. ½ of S. E. ¼ of N. E. ¼), containing 20 acres;

The southeast quarter of the northwest quarter (S. E. ¼ of N. W. ¼) containing 40 acres;

The east three-quarters of the southwest quarter of the northwest quarter (E. ¾ of S. W. ¼ of N. W. ¼), containing 30 acres;

The north half of the north half of the southeast quarter (N. ½ of N. ½ of S. E. ¼), containing 40 acres;

And the north half of the north half of the southwest quarter (N. ½ of N. ½ of S. W. ¼) containing 40 acres; all in section 21, township 1 south, range 7 west, S. B. M.

In witness whereof, I have hereunto set my hand and affixed my official seal, this 4th day of May, 1899.

[County Recorder's Seal] J. F. JOHNSON, Jr.,
County Recorder.

(10c Revenue Stamp duly canceled.)

INSTRUMENTS AFFECTING THE TITLE TO CERTAIN LANDS IN ONTARIO COLONY OWNED BY H. L. MACNEIL.

1.

United States of America

to

The Southern Pacific Railroad Company of California.

PATENT.—Dated 4th Apl., 1879. Recorded 18th Feb., 1881. Liber A, Patents, page 412.

Section 21, T. 1 S., R. 7 W., and other property.

2.

George Chaffey and William B. Chaffey
and
Cyrus T. Mills and M. L. Wicks.

AGREEMENT TO CONVEY.—Dated 31st Aug., 1882. Recorded 12th Oct., 1882. Liber C, Agreements, page 462.

All of Sec. 21, T. 1 S., R. 7 W., and other property.

3.

C. T. Mills and M. L. Wicks
to
George Chaffey, Jr. and W. B. Chaffey.

DEED.—Dated 19th Jan. 1883. Recorded 10th Feb., 1883. Liber 32, Deeds, page 323.

Sec. 21, T. 1 S., R. 7 W., and other property.

4.

George Chaffey, Jr., W. B. Chaffey,
to
George Chaffey, Jr., Wm. B. Chaffey, John E. Plater, J. S. Slauson, and R. M. Widney, Trustees.

DEED OF TRUST.—Dated 16th July, 1883. Recorded 18th July, 1883. Liber 34, Deeds, page 216. Rerecorded 21st March, 1892. Liber 150, Deeds, page 274.

Sec. 21, T. 1 S., R. 7 W., and other property.

5.

Geo. W. Chaffey, Jr., W. B. Chaffey,
to and with
C. T. Mills and M. L. Wicks.

AGREEMENT.—Recorded 23d April, 1886. Liber E, Agreements, page 467.

Sec. 21, T. 1 S., R. 7 W., and other property.

6.

Geo. Chaffey, Jr., and W. B. Chaffey,

to

Geo. Chaffey, Jr., W. B. Chaffey, J. E. Plater, J. S. Slauson, and R. M. Widney, Trustees.

ASSIGNMENT.—Liber E. Agreements, page 467. Recorded 23d April, 1886. Assigns agreement set out in paragraph 5, above.

7.

George Chaffey, Jr., Wm. B. Chaffey, J. S. Slauson, John E. Plater and R. M. Widney, Trustees,

to

H. L. Macneil, O. S. Picher, D. McFarland, Lyman Stewart and Charles Frankish, Trustees.

AGREEMENT TO CONVEY.—Dated 3d March, 1886. Recorded 23d April, 1886. Liber E, Agreements, page 471.

Lots 868 to 872, both inclusive, 917 to 930, both inclusive, and E. ½ Lot 931 of Ontario, and other property.

8.

Southern Pacific Railroad Company

to

Pomona Land and Water Co.

DEED.—Dated 18th Nov., 1886. Recorded 24th Dec., 1886. Liber 51, Deeds, page 16.

South ½ of Sec. 21, T. 1 S., R. 7 W.

9.

Southern Pacific Railroad Company

to

Pomona Land and Water Co.

DEED.—Dated 8th Aug., 1877. Recorded 19th Aug., 1887. Liber 51, Deeds, page 65.

North ½ of Section 21, T. 1 N., R. 7 W.

10.

J. E. Plater, J. S. Slauson and R. M. Widney, Trustees, and H. L. Macneil, O. S. Picher, D. McFarland, Lyman Stewart and Chas. Frankish, Trustees,

to

Ontario Land and Improvement Company, a Corporation.

DEED.—Dated 5th Aug., 1887. Recorded 19th Aug., 1887. Liber 64, Deeds, page 5.

Lots 868, 869, 870, 871, and 872, 917, 918, 919, 920, 921, 922, 923, 924, 925, 926, 927, 928, 929 and 930, and E. ½ Lot 931 of Ontario, and other property.

11.

Pomona Land and Water Co.

to

J. E. Plater.

DEED.—Dated 5th May, 1888. Recorded 2d June, 1888. Liber 76, Deeds, page 212.

Section 21, T. 1 S., R. 7 W.

12.

John E. Plater

to

Ontario Land and Improvement Company.

DEED.—Dated 28th May; 1888. Recorded 2d June, 1888. Liber 78, Deeds, page 194.

Section 21, T. 1 S., R. 7 W.

13.

Ontario Land and Improvement Company

to

H. L. Macneil.

DEED.—Dated 20th Dec., 1890. Recorded 3d Feb., 1891. Liber 126, Deeds, page 77.

Lots 868, 869, 870, 871, 872, 917, 918, 919, 920, 921, 922, 923, 924, 925, 926, 927, 928, 929 and 930, Ontario, and other property.

14.

Ontario Land and Improvement Company.

RESOLUTION.—Dated 23d Dec., 1890. Recorded 5th Feb., 1892. Liber G, Miscellaneous, Records, page 64.

Authorizing President and Secetary to convey to H. L. Macneil.

15.

H. L. Macneil
vs.
J. Doe, et al.

LIS PENDENS.—Recorded 21st Aug., 1895. Liber E, Lis Pendens, page 11.

Notice of action to quiet title to premises described in paragraph 13, above.

16.

H. L. Macneil
vs.
J. Doe, et al.

ACTION.—Case No. 6173.

Action referred to in paragraph 15 above.

17.

H. L. Macneil
vs.
John Doe, Richard Roe, Samuel Hoe, William Coe, Susan Roe, Jane Hoe and Mary Goe.

JUDGMENT.—Dated 1st July, 1898. Recorded 1st July, 1898, at 1:10 P. M. Liber A, Judgments, page 679.

Recites: "That the true name of defendant, John Doe, is Roy S. Sternberg; that the true name of defendant, Richard Roe, is Stephen T. Bundy; that the true name of defendant, Samuel Hoe, is W. H. Hargrave; and that the true name of defendant Mary Doe, is Mrs. A. E. Bundy.

And that the true names of said several defendants have been substituted herein in lieu of said fictitious names."

(Fictitious defendants dismissed from action.)

"Now, therefore, it is ordered, adjudged, and decreed: That neither of the aforesaid defendants, Ste-

phen T. Bundy, Roy Sternberg, Mrs. A. E. Bundy, or W. H. Hargrave, has any estate or interest whatsoever in nor any lien upon the land or premises hereinafter described nor any part thereof; and that they, and each of them, be forever enjoined and debarred from asserting any claim or lien whatsoever, in or to the same adverse to the plaintiff.

And that plaintiff as the owner of said premises be quieted in his title thereto."

Entered 16th Dec., 1898.

Docketed 19th Dec., 1898.

[Endorsed]: No. 878. In the United States Circuit Court, Ninth Circuit, Sou. Dis. of Cal. The U. S. of America vs. The S. P. R. R. Co., et al. Proof and Chain of Title of H. L. Macneil. R. H. F. Variel, Attorney at Law, Los Angeles, Cal. Attorney for said Deft.

[Endorsed]: Defendant's Exhibit "C." Filed May 15, 1900. A. M. Cates, Special Examiner and Stenographer.

Defendants' Exhibit "D."

(Copy)

No. 12,875.

Y.

RECORDER'S CERTIFICATE.

State of California, }
County of San Bernardino. } ss.

I, J. F. Johnson, Jr., County Recorder of the County of San Bernardino, State of California, hereby certify

that the records of the Recorder's office of said county show that the United States issued a patent on the 27th December, 1883, to the Southern Pacific Railroad Company, a corporation, for the property hereinafter described; that said Patent was duly recorded in said Recorder's Office on the 13th February, 1884, in Book B of Patents, page 329, and as shown by the records of said Recorder's Office, all interest so acquired by said corporation in the following described property is, by mesne conveyances and by proceedings had in the Superior Court of San Bernardino County, now vested in the San Francisco Savings Union, a Corporation, as more fully appears by the chain of title hereinafter shown:

DESCRIPTION:

The east one-half (½) of the northeast quarter (¼) of the southeast quarter (¼), the northwest quarter (¼) of the southeast quarter (¼), and the south one-half (½) of the southeast quarter (¼) of section twenty-seven (27) in township one (1) north of range five (5) west, San Bernardino base and meridian.

In witness whereof, I have hereunto set my hand and affixed my official seal, this 9th day of May, 1899, at 8 o'clock, A. M.

[County Recorder's Seal] J. F. JOHNSON, Jr.,
County Recorder.

(10c Revenue Stamp duly canceled.)

CHAIN OF TITLE.

1.

United States of America

to

Southern Pacific Railroad Company.

PATENT.—Dated 27th Dec., 1883. Recorded 13th Feb., 1884. Liber B, Patents, pg. 329. Rerecorded 4th Apl., 1890. Liber C, Patents, pg. 446.

Property under search, with other property.

2.

Contract 3353.

Southern Pacific Railroad Company

to

E. H. Morse.

DEED.—Dated 29th Dec., 1886. Recorded 3d Jan., 1887. Liber 51, Deeds, pg. 18. Consideration, $999.90.

Property under search, with other property.

3.

E. H. MORSE

to

F. M. Chouguill.

DEED.—Dated Jan., 1887. Recorded 8th Jan., 1887. Liber 53, Deeds, pg. 117. Acknowledged 8th Jan., 1887. Consideration, $226.00.

Property under search, with other property.

4.

F. M. Choguill
to
Geo. H. Bonebrake and F. C. Howes.

DEED.—Dated 8th Jan., 1887. Recorded 13th Apl., 1887. Liber 54, Deeds, pg. 538. Consideration $275.00.

Property under search, with other property.

5.

George H. Bonebrake and F. C. Howes, Samuel Merrill,
to
Semi-Tropic Land and Water Company, a Corporation.

DEED. Dated 16th May, 1887. Recorded 16th May, 1887. Liber 57, Deeds, pg. 191. Consideration $1.00 and other valuable considerations.

Property under search, with other property.

6.

Semi-Tropic Land and Water Company
to
San Francisco Savings Union, a Corporation.

MORTGAGE.—Dated 24th Mch., 1892. Recorded 31st Mch., 1892. Liber 43, Mortgages, page 348.

Binds property under search, with other property, to secure one note for $13,000.00, payable June 10, 1894.

7.

San Francisco Savings Union
vs.
Semi-Tropic Land and Water Company, E. S. Rowley, Receiver of said Company, H. Shiveley, H. Pierce, E. F. Pierce, W. H. Tibbot, John Doe, et al.

LIS PENDENS.—Recorded 14th Mch., 1894. Liber D., Lis Pendens, page 187.

Notice of action to foreclose mortgage recorded in Liber 34 of Mortgages, page 348, and shown in paragraph 6 above.

8.

San Francisco Savings Union

vs.

Semi-Tropic Land and Water Company et al.

ACTION.—Case No. 5408.

Action referred to in foregoing Lis Pendens.

Judgment of foreclosure entered 4th February, 1896.

CERTIFICATES OF SALE.

9.

Semi-Tropic Land and Water Company, By Commissioner,

to

San Francisco Savings Union.

Dated 1st Aug. 1896. Recorded 24th Aug., 1896. Liber H, Certificates of Sales, pg. 5.

Property under search, with other property.

10.

Semi-Tropic Land and Water Company, By Commissioner,

to

San Francisco Savings Union.

DEED.—Dated 8th Mch., 1897. Recorded 29th Mch., 1897. Liber 239, Deeds, pg. 407. Consideration, $13,723.48.

Property under search, with other property.

[Endorsed]: No. 878. In the U. S. Circuit Court, Ninth Circuit, Sou. Dis. of Calif. The U. S. of America vs. Henry M. Loud. Chain of Title of San Fran, Sav. Union. R. H. F. Variel, Attorney for Deft.

[Endorsed]: Defendant's Exhibit "D." Filed May 15, 1900. A. M. Cates, Special Examiner and Stenographer.

Defendants' Exhibit "E."

No. 12,959. (Copy)

RECORDER'S CERTIFICATE.

State of California,
County of San Bernardino. } ss.

I, J. F. Johnson, Jr., County Recorder of the county of San Bernardino, State of California, hereby certify that the records of the Recorder's office of said County show that the United States issued a Patent on the 27th day of December, 1883, to the Southern Pacific Railroad Company, a corporation, for the property hereinafter described; that said Patent was duly recorded in said Recorder's Office on the 13th day of February, 1884, in Book B of Patents, page 322, and as shown by the records of said Recorder's Office, all interest so acquired by said corporation in the following described property is, by mesne conveyances, now vested in

W. D. Turner,

as more fully appears by the chain of title hereinafter shown:

DESCRIPTION:

That portion of Government Lot three (3) in the southwest quarter (¼) of section thirty-five (35) in township one (1) north of range seven (7) west, San Bernardino base and meridian, lying east of lot four (4) in block four (4) of Cucamonga Homestead Association, more fully described as follows, to wit:

Beginning at a point north 1° 03′ west 20.54 chains from the intersection of the San Bernardino base line with the east line of the Cucamonga Grant; said point of intersection being also the southwest corner of the southeast ¼ of section thirty-five (35) in township 1 north of range 7 west, S. B. B. & M., thence north 1° 03′ west 10.04 chains; thence east .55 of a chain; thence south 10.03 chains; thence west .37 of a chain to the place of beginning; estimated to contain 0.46 of an acre.

In witness whereof, I have hereunto set my hand and affixed my Official Seal, this 25th day of May, 1899.

[County Recorder's Seal.] J. F. JOHNSON, Jr.,
County Recorder.

(10c Revenue Stamp duly canceled.)

CHAIN OF TITLE.

1.

United States of America

to

Southern Pacific Railroad Company.

PATENT.—Dated 27th Dec., 1883. Recorded 13th Feb., 1884. Liber B, Patents, page 322.

2.

Contract 3557.

Southern Pacific Railroad Company

to

A. O. Porter.

DEED.—Dated 16th May, 1884. Recorded 3d June, 1884. Liber 37, Deeds, pg. 292.

3.

A. O. Porter

to

Hermosa Land and Water Co.

DEED.—Dated 9th Aug., 1884. Recorded 13th Aug., 1884. Liber 38, Deeds, pg. 173.

4.

Hermosa Land and Water Co.

to

W. D. Turner.

DEED.—Dated 26th Mch., 1883. Recorded 14th Apl., 1883. Liber 33, Deeds, pg. 106.

[Endorsed]: No. 878. In the United States Circuit Court, Ninth Circuit, Sou. Dis. of Cal. The U. S. of Amer. vs. The S. P. R. R. Co., et al. Proof and Chain of Title Lands of W. D. Turner. R. H. F. Variel, Attorney at Law, Los Angeles, Cal. Attorney for Plaintiff.

[Endorsed]: Defendant's Exhibit "E." Filed May 15, 1900. A. M. Cates, Special Examiner and Stenographer.

[Endorsed]: No. 878. In U. S. Circuit Court, So. Dist. Cal., United States vs. S. P. R. R. Co., et al. Report of A. M. Cates, Special Examiner and Stenographer. Filed June 2, 1900. Wm. M. Van Dyke, Clerk.

In the Circuit Court of the United States, Ninth Circuit, Southern District of California.

UNITED STATES OF AMERICA,
Complainant
vs.
THE SOUTHERN PACIFIC RAILROAD COMPANY, et al.,
Defendants.
No. 878.

Proceedings had Before Stephen Potter, Special Examiner in Chancery, Under Appointment Made by Order of the Above-Entitled Court, on the 17th Day of April, A. D. 1900.

San Francisco, May 9th, A. D. 1900.

Upon this day, at the hour of nine o'clock A. M., there appeared before me Joseph H. Call, Esq., Special Assistant United States Attorney and Solicitor for the complainant, on behalf of the complainant, and Wm. Singer, Jr., Esq., solicitor for the defendants, on behalf of the defendants; whereupon the following proceedings were had:

TESTIMONY TAKEN ON BEHALF OF DEFENDANTS AT SAN FRANCISCO, CALIFORNIA.

JEROME MADDEN, called as a witness on behalf of the defendants, being first duly sworn, testified as follows:

Mr. CALL.—Mr. Singer, will it be understood that the testimony taken upon this hearing will be subject to objections on behalf of the government as to its competency and relevancy?

(Testimony of Jerome Madden.)

Mr. SINGER.—Yes, sir, it will be so understood throughout.

Mr. SINGER.—Q. Mr. Madden, you are land agent of the Southern Pacific Railroad Company, one of the defendants in this action, are you not? A. I am.

Q. For how long have you been such land agent?

A. Since May 10th, 1876.

Q. Are you the custodian of the contracts issued by that company for the sale of its lands? A. I am.

Q. Do you keep a record in your office of all deeds issued by that company conveying land sold by it?

A. I do.

Q. Are you also custodian of all patents issued by the United States to that company for lands of its grants?

A. Yes, sir.

Q. Do your records correctly show all contracts and deeds issued by that company for the sale of its lands, and the price and particulars of such sales?

A. They do.

Q. Did you ever prepare a statement from the records of your office showing the status of the lands described in Exhibit "A," and Exhibit "B," to complainant's bill?

A. I have.

Q. For what purpose was that statement made?

A. To show the condition of the books in relation to these lands, sales, and everything in connection with them, as revealed by the records.

Q. Was there any particular occasion for preparing the statement at that time?

(Testimony of Jerome Madden.)

A. The reason of its being prepared at that time was at the request of the law department, to show the condition of these lands in regard to a suit which was commenced by the government against the railroad company with regard to the title.

Q. The suit you refer to is this suit, is it not?

A. I presume so.

Q. At what date was that statement made?

A. May 22d, 1899.

Q. Have you that statement with you?

A. There it is. (Producing.)

Q. Was that statement made by you, or under your immediate supervision?

A. It was made by my direction and under my supervision.

Q. Is it a correct statement of all the matters shown upon it? A. It is absolutely correct.

Q. Was it compared and checked with the records of your office and with the patents?

A. It was compared and checked with the records of the office by two men.

Q. Their initials of comparison are endorsed upon each sheet of this statement, are they not?

A. They are.

Mr. SINGER.—I will withdraw Mr. Madden for a few moments, and be sworn myself.

WILLIAM SINGER, Jr., called as a witness on behalf of the defendants, being first duly sworn, testified as follows:

(Testimony of William Singer, Jr.)

The WITNESS.—These statement sheets, about which Mr. Madden has been testifying, were prepared by him, at my request, to constitute Exhibit "A" to the defendants' answer in this suit. Mr. Madden's statement sheets are prepared on very heavy paper, running out one contract on each sheet, thus making 215 large sheets. For the purpose of economy and space, I had the clerks of my office copy these statements on thin sheets, printed to receive a statement of three contracts on each sheet. Exhibit "A" attached to the defendants' answer in this case was made under my immediate supervision, was carefully compared with the original statement of Mr. Madden, and I believe it to be a correct copy of Mr. Madden's statement in every particular.

Mr. CALL.—I will consent, on behalf of the government, that the Exhibit "A" to the answer referred to by Mr. Singer, may stand in lieu of the tabulated statement prepared under the direction of Mr. Madden, and about which he has testified, subject to all of the objections as to its competancy and relevancy other than its secondary nature.

Mr. SINGER.—I will now offer in evidence Exhibit "A" to the defendants' answer.

The WITNESS.—For the past six years I have been attorney for the land grants of the Southern Pacific Railroad Company, and for five or six years prior to that Mr. Joseph D. Redding was attorney for the Land Department of that company. I have in my custody the registers of

(Testimony of William Singer, Jr.)

actions kept by Mr. Redding during his term of office, and have also kept a very full record of all proceedings taken by me at such time during my term of office. I have made careful examination, and find that no suit has ever been brought in foreclosure, or otherwise, upon any of the contracts set forth in Exhibit "A" to the defendants' answer, excepting that, as shown on page 60 of Exhibit "A" to the defendants' answer, a suit in foreclosure of Contract No. 5060 was brought and such proceedings had therein that a decree of foreclosure was entered on April 24th, 1896.

Cross-Examination.

Mr. CALL.—As to those lands described in Exhibit "A" to the answer which remain under executory contracts, state, if you know, what has been the practice of the railroad company with respect to receiving interest and parts of the purchase price upon such executory contracts for the period ending with the time of the commencement of this suit?

A. The practice of the company has been to receive the money, but when the land became involved in a suit, not to enforce the payment, but leave it open pending the result of the suit.

Q. But the practice has been to receive the payments where parties made them?

A. Yes, sir; down to the time final judgment was procured against the company.

Q. Then, as a matter of fact, the company has gone on and received payments for lands described in Exhibit

(Testimony of William Singer, Jr.)

"A" prior to the commencement of this suit, in the same manner as it did prior to the decisions of the Supreme Court of the United States in the cases 168 U. S., pages 1 to 66, and 146 U. S., pages 570 to 619?

A. As to the particular lands in this suit I do not know. Exhibit "A" will show; but I will state generally that the company has received payments under contracts for patented lands, but has not received payments for unpatented lands within the primary limits of the Branch Line Grant since the decision in 168 U. S.

Mr. CALL.—That is all, Mr. Singer. Mr. Singer's signature will be excused.

JEROME MADDEN, being recalled on behalf of the defendants, continued his testimony as follows:

Mr. SINGER.—How many forms of contracts have been used in your office in making sales of the company's lands?

A. Practically two. At one time there were three forms, but the first form was retired some time ago—quite a long time ago.

Q. The sales set forth in Exhibit "A" to the defendants' answer in this case were all made on either of two forms of contracts, were they not?

A. They were. They were all made on two forms of contracts, one for patented lands, and the other for lands that were unpatented at the time of the sale.

Q. Have you with you a form of contract made for the sale of lands not patented at the date of contract?

A. Yes. (Producing.)

(Testimony of Jerome Madden.)

Mr. SINGER.—I will now offer in evidence the form, produced by the witness, of contracts for lands unpatented at the date of contract, and ask that it be marked Defendants' Exhibit No. 1. (The blank form produced by the witness, and offered in evidence, was marked by the Examiner, Defendants' Exhibit No. 1, and is annexed hereto.)

Mr. SINGER.—Is that the form upon which the contracts set forth in Exhibit "A" to the defendants' answer for lands unpatented at the date of the sale, were written?

A. It is.

Q. Have you with you the form used for the sale of lands patented at the date of contract? A. I have.

Q. Will you produce it?

A. Yes, sir. (Producing.)

Mr. SINGER.—I will now offer in evidence the last-mentioned form of contract, and ask that it be marked Defendants' Exhibit No. 2. (The blank form produced by the witness, and offered in evidence, was marked by the Examiner, Defendants' Exhibit No. 2, and is attached hereto.)

Mr. SINGER.—Q. Were all the sales reported in Exhibit "A" to the defendants' answer as made for lands patented at the date of contract drawn upon the form introduced here as Defendants' Exhibit No. 2?

A. They were.

Q. You may state whether or not all the sales of land

(Testimony of Jerome Madden.)

set forth in Exhibit "A" to the defendants' answer represents genuine transactions?

A. They were all made in good faith, and every one of them was genuine.

Q. Was the amount in each instance there shown to have been received the actual amount received by the company for the sale of the lands?

A. The actual price as set forth and the actual amount received by the company was also given.

Q. And are there given truly, are they?

A. They are there given truly. The exact amount that the company received was always put in the contract and in the deed.

Q. You may state whether or not the persons represented on Exhibit "A" as purchasers made their purchases in good faith, believing the company to be the owners of the lands?

A. They all did, as far as their representations to me were concerned.

Q. Was the land in each instance sold for its full value as you appraised and believed it to be at the time?

A. It was sold at its appraised value in every instance.

Q. Was there, in any instance, a reduced price fixed for any land because of the supposition or belief that possibly and probably the company's title was not as good as it might be? A. Not that I know of.

Q. Can you produce all the contracts and patents referred to in Exhibit "A" to the defendants' answer?

(Testimony of Jerome Madden.)

A. I have duplicate contracts that were issued to all the purchasers in this Exhibit "A."

Q. Then, as a matter of fact, you can produce all the contracts and all the patents referred to in Exhibit "A" to defendants' answer? A. I can.

Mr. SINGER.—Mr. Call, I will, if you desire, produce each contract and deed and patent abstracted in Exhibit "A" to the defendants' answer; but I will ask, in the interest of economy, that you excuse the production of the original, and satisfy yourself that Exhibit "A" is a true statement, and let it stand, without objection to its competency, in lieu of the contracts, deeds and patents themselves.

Mr. CALL.—I will waive the production of the original patents and contracts and deeds, and substitute therefor the abstract showing sales contained in Exhibit "A" attached to the answer, together with the forms of contracts under which those sales were made, which have been offered in evidence, and marked Defendants' Exhibits Nos. 1 and 2, subject to all objections as to competency and relevancy other than as to the secondary character of the testimony.

Mr. SINGER.—That is all.

Cross-Examination.

Mr. CALL.—Q. Concerning the provision in the contract introduced and marked Defendants' Exhibit No. 1, which provides that as patent has not yet issued for the lands, the contract should be null and void as to such

(Testimony of Jerome Madden.)

contracts for which it shall be finally determined that patents cannot be obtained, state whether, in appraising the lands for sale, or in selling them, that condition of the title was referred to, or taken into consideration, in fixing the price, or in selling the land, by the company?

A. It was not. The company believed that it would get good title, and did not appraise the lands for any less than their reasonable value.

Q. And the sales made by the company were regardless of the condition of the title set forth in the contract as to want of patent?

A. I will say that the company believed that it would get full title for the land, and, thinking so, it apraised the land at its full value, and sold it at those figures. That is, its reasonable value.

Mr. CALL.—That is all.

Redirect Examination.

Mr. SINGER.—Q. You may state, Mr. Madden, whether you made any difference in grading the lands for sale in cases where there were patents and in cases where there were no patents?

A. No, they were all graded the same, whether they were patented or unpatented.

Mr. SINGER.—Will you excuse the signature of Mr. Madden to his testimony?

Mr. CALL.—Yes, sir.

JOHN M. GRIFFITH, called as a witness on behalf of the defendants, being first duly sworn, testified as follows:

Mr. SINGER.—Q. Where do you reside, Mr. Griffith?

A. In Los Angeles, California.

Q. Where were you born?

A. At Baltimore City, State of Maryland.

Q. Did you ever purchase any land from the Southern Pacific Railroad Company? A. I have.

Q. At the time of your purchase did you enter into a contract of purchase with the company?

A. I did.

Q. I will now show you an instrument, purporting to be contract No. 3435, between the Southern Pacific Railroad Company and J. M. Griffith, for the purchase and sale of tracts of land therein described in section 35, township 1 south, range 9 west, San Bernardino Meridian, and ask you whether the signature to that contract "J. M. Griffith," was written by you?

A. That is my signature written by me. The contract was entered into on my part as the party desiring to purchase.

Mr. SINGER.—I will now exhibit in evidence the contract identified by the witness, and ask that a copy of it be made by the Examiner, and attached to the record as Defendants' Exhibit No. 3.

(A certified copy of the document produced by the witness, and exhibited in evidence, was marked by the Examiner, Defendants' Exhibit No. 3, and is attached to this record.)

(Testimony of John M. Griffith.)

Mr. SINGER.—I will ask you whether the transaction of purchase and sale then had between the company and yourself is truly set forth in this contract?

A. It is.

Q. According to this contract the sale price was $880, of which you at the time paid $176, and agreed to pay the balance of purchase price on or before five years after date, with interest at seven per cent. per annum. Did you, at the time of making that contract, in fact pay the company $176, as there represented? A. I did.

Q. State whether or not the balance of purchase price called for by the contract was subsequently actually paid? A. It was.

Q. Please state whether at the time of the purchase you had any knowledge that the government of the United States had any claim to the lands of that contract?

A. I had no such knowledge.

Q. What was your belief in respect of the railroad company's title when you were purchasing?

A. It was perfect, or would be made perfect.

Q. Had you at that time any notice, or knowledge, of any cloud upon the company's title? A. None.

Mr. SINGER.—That is all, Mr. Griffith.

Cross-Examination.

Mr. CALL.—Q. I suppose you were aware of a clause in the contract, Mr. Griffith, stating that in case the patent should not be procured by the company the contract would be void, were you not?

(Testimony of John M. Griffith.)

A. That clause, and all the clauses therein, were read by me, yes, sir.

Q. And you assumed the company would procure the title, did you, or were you induced to make the contract on account of the provision that in the event of the failure of the company to procure title the money would be refunded?

A. I was not influenced or induced by any consideration of that kind. I had perfect faith in the just claim of the railroad company to the land that they were selling.

Q. You assumed they would get the title?

A. Yes, I fully believed it, and had full confidence in it.

Mr. CALL.—That is all.

Mr. SINGER.—Will you excuse the signature of Mr. Griffith to his testimony?

Mr. CALL.—Yes.

Mr. SINGER.—I will exhibit in evidence the annual report of the commissioner of the general land office for the fiscal year ending June 30, 1875, for the purpose of showing that the quantity to be found in the odd sections within the limits of the Southern Pacific Railroad Company's Branch Line and Main Line Grants are unequal to the quantity granted, and ask that the items marked on page 409 be copied by the Examiner, and attached to the record as Defendants' Exhibt No. 4.

(Testimony of John M. Griffith.)

(A certified copy of the items referred to in the document exhibited in evidence was marked Defendants' Exhibit No. 4 and is annexed hereto.))

Mr. CALL.—Objected to: first, as incompetent, immaterial and irrelevant; second, because the document appears at most to be an estimate of some officer of the Interior Department, and is not evidence of the fact attempted to be shown; and, third, because it does not appear upon what basis the calculation was made, that is, as to whether the lands within the limits of the Atlantic and Pacific grant were deducted from the quantity mentioned in the first column, that is, the lands which it was assumed by counsel that the Southern Pacific Railroad Company would be entitled to receive, or as to whether lands within the limits of the Texas Pacific Railroad Company's grant were deducted from the quantity estimated to be within the Southern Pacific Railroad Company's limits, or were taken into consideration.

HENRY S. BRIDGE, called as a witness on behalf of the defendants, being first duly sworn, testified as follows:

Mr. SINGER.—Q. Where do you reside, Mr. Singer?

A. My legal residence is in Mill Valley, Marin County, California.

Q. You do business in San Francisco, do you?

A. I do business in San Francisco, yes, sir.

Q. Where were you born, Mr. Bridge?

A. In Boston, Massachusetts.

(Testimony of Henry S. Bridge.)

Q. Did you ever purchase any land from the Southern Pacific Railroad Company? A. I did.

Q. I will show you an instrument, purporting to be Contract 8010 between the Southern Pacific Railroad Company and H. S. Bridge, about the sale and purchase of the northwest quarter of the southwest quarter of section 1, township 1 south, range 15 west, San Bernardino meridian, and ask you whether the signature "H. S. Bridge," which appears there, was subscribed by you (showing)?

A. That is my handwriting. It was subscribed by me.

Mr. SINGER.—I will now exhibit in evidence the Contract No. 8010, and ask that a copy be made and certified by the Examiner, and attached to the record as Defendants' Exhibit No. 5.

(A certified copy of the document produced and exhibited in evidence, was marked by the Examiner, Defendants' Exhibit No. 5 and is attached hereto.)

Q. Does this contract truly represent the terms and conditions of the transaction at that time had between the railroad company and yourself?

A. It does, exactly.

Q. According to this contract the forty acres described were sold to you for the sum of $100, of which sum $25.60 was then paid by you, and you agreed to pay the remainder of purchase price on or before five years after date, with interest at seven per cent per annum.

(Testimony of Henry S. Bridge.)

Did you, as a fact, at that time, pay $25.60 to the company?

A. Yes, $20 was to apply on the principal, and $5.60 for interest.

Q. Was the balance of purchase price thereafter fully paid up? A. It was.

Q. At the time you entered into that contract did you know whether or not the land was patented to the company?

A. I don't think I looked that up.

Q. Did you at that time have any knowledge that there was any cloud upon the company's title to the land?

A. I had had other transactions with the railroad company in regard to land matters, and was satisfied they would make it good if the title was not straight.

Q. At the time of the purchase, state whether you believed that the title was perfect?

A. I believed the title on that piece was perfect.

Q. Did you have any knowledge, or information, at the time, that the government had any claim to the lands described in that contract?

A. Not to that piece, I don't think. That I did not look up.

Q. Were you satisfied at the time with the company's title without examining into it?

A. I was; if it was not right I knew they would make it right.

(Testimony of Henry S. Bridge.)

Q. Was there present in your mind at that time any question as to the validity of the company's title?

A. Not at all.

Mr. SINGER.—That is all.

(No cross-examination.)

Mr. SINGER.—Will you excuse the signature of Mr. Bridge to his testimony?

Mr. CALL.—Yes.

It is stipulated that the persons named in Exhibit "A" attached to the answer as having purchased, or contracted to purchase lands therein described, not patented, at the date of purchase, or contract, would, if produced as witnesses, testify substantially in respect to their several purchasss as the witness John M. Griffith has testified in respect to his purchase, excepting as to the amount of the purchase price, amount paid, dates of payment and description of land; and that the persons named in said Exhibit "A" as having purchased, or contracted to purchase, lands patented at the date of purchase, or contract of purchase, would, if produced as witnesses in this cause, testify substantially as the witness Henry S. Bridge has testified with respect to his purchase, excepting as to the purchase price, amount paid, description of land and dates of payment.

It is stipulated that the dismissal by the United States in the case of the United States vs. Southern Pacific Railroad Company, numbered 600 on the docket of the Uni-

ted States Circuit Court, Southern District of California, on January 7th, 1898, of the lands described in said order of dismissal, was made without prejudice.

And it is further stipulated that the bill of complaint in this cause may be deemed to be amended by adding, on page 12, line 9, after the words Exhibit "B," the words "without prejudice"; and the clerk of the Court may, by interlineation, insert said words "without prejudice," at the place mentioned.

(Thereupon the proceedings before the Special Examiner were closed.)

In the Circuit Court of the United States, Ninth Circuit, Southern District of California.

UNITED STATES OF AMERICA, Complainant
vs.
THE SOUTHERN PACIFIC RAILROAD COMPANY, et al., Defendants.
No. 878.

Certificate of Examiner.

I certify the foregoing testimony was taken pursuant to an order of the above-named court, made and entered upon the minutes of said court April 17th, A. D. 1900, at the office of William Singer, Jr., Esq., in Wells, Fargo & Company's Building, at the corner of Second and Mission streets, in the city and county of San Francisco, and State of California, upon Wednesday, the 9th day of May, A. D. 1900, in my presence, and in the presence of

counsel for the respective parties to the above-entitled cause, and constitutes all the testimony then and there adduced; that previous to giving his testimony, each of the witnesses in said record named was by me duly sworn to tell the truth, the whole truth, and nothing but the truth in said cause; that said testimony was fully, truly and correctly taken in shorthand and transcribed by me; that the said testimony after being so transcribed was not read by, or by me to, the said witnesses, nor signed by them, respectively, it being expressly agreed and stipulated between counsel for the respective parties that such reading and signing should be waived, as in said record set forth.

Accompanying said testimony, and forming part thereof, are the several exhibits introduced in connection therewith, and referred to and specified therein, except where counsel presenting the exhibits requested that copies thereof be made and attached in lieu of the originals, as set forth in the foregoing record, and in such cases copies of said exhibits, duly certified by me as being full, true and correct copies of the original exhibits presented before me, are annexed in place of said original exhibits.

I further certify that I am not attorney nor of counsel for any of the parties to said cause, nor in any way interested in the event thereof.

In witness whereof, I have hereunto set my hand this 22d day of May, A. D. 1900.

STEPHEN POTTER,
Special Examiner and Stenographer.

Defendants' Exhibit No. 1.

Southern Pacific Railroad Company.

No.———.

LAND DEPARTMENT.

This agreement, made at San Francisco, California, this —— day of ————, A. D. 18——, between the Southern Pacific Railroad Company, party of the first part, and ———— of the county of ————, State of California, part —— of the second part, witnesseth: That the party of the first part, in consideration of the covenants and agreements of the part —— of the second part hereinafter contained, agrees to sell to the part ——of the second part, the following tract — of land, situated in the county of ————, State of California, and know and designated on the public surveys of the United States as ———————— of Section ——, Township ——, Range ——, Base and Meridian, containing ———/100 acres, for the sum of ——— dollars, gold coin of the United States.

And the part —— of the second part, in consideration of the premises, agree — to buy the land hereinbefore described, and to pay to the party of the first part the said sum of ——— Dollars, as follows, to wit: ——— Dollars, and $———, one year's interest in advance on the remainder, in United States Gold Coin of the present standard of value, on the execution of this Contract, and the remainder, to wit: the sum of ——— Dollars, with interest thereon, annually in advance at the rate

of seven per cent per annum, both in United States Gold Coin, of the present standard of value, at its office in the City and County of San Francisco, on or before the —— day of ———, 18—; and, also, to pay all taxes and assessments that may at any time be levied or imposed upon said premises, or any part thereof; and if the part —— of the second part shall fail to pay such taxes or assessments, or any part thereof, at any time when the same shall become due, then the said party of the first part may pay the same; and all sums so paid by the party of the first part shall be added to and become part of the unpaid remainder, and shall bear interest at the same rate, and be paid in the same manner, and at the same time and place hereinbefore provided for the payment of said remainder and the interest thereon.

It is Further Agreed, that upon the punctual payment of said purchase money, interest, taxes and assessments, and the strict and faithful performance by the part —— of the second part, ——— legal representatives or assigns, of all the agreements herein contained, the party of the first part will, after the receipt of a patent therefor from the United States, upon demand and the surrender of this instrument, execute and deliver to the part —— of the second part, ——— heirs and assigns, a grant, bargain and sale deed of said premises, reserving all claim of the United States to the same as mineral land, and also reserving therein to the party of the first part for railroad purposes, a strip of land one hundred feet wide, lying equally on each side of the track of the railroad of said Company, and all branch railroads now

or hereafter constructed thereon, and the right to use all water needed for the operating and repair of said railroads —— and with the condition that the part —— of the second part, ——— heirs and assigns, shall erect and forever maintain good and sufficient fences on both sides of said strip or strips of land.

It is Further Agreed, that until the full payment of said purchase money, interest, taxes and assessments, no strip or waste shall be made on said premises, and that no wood or growing trees shall be cut thereon, except for necessary fuel for the family of the legal occupant under this contract, and for the erection of buildings or fences on said land, without the previous written consent of the party of the first part.

It is further Agreed, that the part —— of the second part may at once enter upon, take and hold possession of said premises, provided, however, that if the part —— of the second part shall fail to make any of said payments of remainder or interest, taxes or assessments as herein provided, or shall fail to comply strictly with any of the stipulations of this Contract, then this right shall cease, and the party of the first part, its successors or assigns, may, without notice, enter upon, take and hold possession of the said premises with all the improvements thereon.

It is further agreed, between the paties hereto, that the party of the first part claims all the tracts hereinbefore described, as part of a grant of lands to it by the Congress of the United States; that patent has not yet issued to it for said tracts; that it will use ordinary dili-

gence to procure patents for them; that as, in consequence of circumstances beyond its control, it sometimes fails to obtain patent for lands that seem to be legally a portion of its said grant; therefore nothing in this instrument shall be considered a guarantee or assurance that patent or title will be procured; that in case it be finally determined that patent shall not isssue to said party of the first part for all or any of the tracts herein described, it will, upon demand, repay (without interest), to the part—— of the second part, all moneys that may have been paid to it by———on account of any of such tracts as it shall fail to procure patent for, the amount of repayment to be calculated at the rate and price per acre, fixed at this date for such tracts by said party of the first part, as per schedule on page 3 hereof; that said lands being unpatented, the party of the first part does not guarantee the possession of them to the part—— of the second part, and will not be responsible to ——— for damages or costs in case of ——— failure to obtain and keep such possession.

It is further agreed, that if the party of the first part shall obtain patent for part of the lands herein described, and shall fail to obtain patent for the remainder of them, this contract shall in all its provisions be and remain in full force and virtue as to the tracts patented, and shall, except as to repayments herein provided for, be null and void as regards those tracts for which it shall be finally determined that patent cannot be obtained.

It is further agreed that the part—— of the second part will never deny that the tracts herein described, or any part of them, are a part of said grant, and will do no act

to hinder, delay or impede the obtaining of patent for them by the party of the first part; and that ——— will not obtain or hold possession of all or any of them adversely to said party of the first part.

It is further agreed, that this contract shall not be assignable, except by indorsement, and with the written consent of the party of the first part, and the written promise of the assignee— to perform all the undertakings and promises of the part—— of the second part as above set forth.

In testimony whereof, the party of the first part has caused these presents to be signed in duplicate by its Secretary, and Land Agent, and the par—— of the second part ha— signed ——— name— hereto.

———————

Land Agent.

———————,

Secretary.

———————[Seal]

———————[Seal]

Schedule of prices at which the lands described in this Contract have been sold this —— day of ———, 188—,

Fraction.	Sec.	Tp.	Range.	B. & M.	No. of Acres.	Rate per Acre.	Amount.

————, the within named purchaser—, for and in consideration of ——— dollars, to ——— in hand paid, do— hereby sell, assign and transfer all ——— right, title, interest and claim in and to the within described tract— or parcel— of land, and the within contract No. ——— unto ————, ———heirs and assigns forever, subject to the stipulations and conditions therein contained, which are to be performed by said assignee—.

Given under ——— hand— and seal—, this ——— day of ————, A. D. 18——.

————[Seal]

————[Seal]

State of California,
—— County of————. } ss.

On this —— day of ————, in the year one thousand eight hundred and ———, before me, ————, a ————, in and for said County, personally appeared ————, known to me to be the person— whose name— ——— subscribed to the above instrument, and acknowledged to me that ——— executed the same.

In witness whereof, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

————,

————,

————, 18——.

In consideration of the above and foregoing assignment to ————, ———— hereby agree— with the said ———— and with the Southern Pacific Railroad Com-

pany, that ——— will do and perform all the stipulations and conditions in the said contract No. ———, required to be done and performed by the said ————.

————————[Seal]

————————[Seal]

———, 18——.

The Southern Pacific Railroad Company hereby consents to the above assignment to ————.

————————,

————————,

[Endorsed]: Unpatented Lands. No. ———, Contract for a Deed. Southern Pacific R. R. Company to ————. Dated ————, 188—. Interest $———, due on the —— day of ———, of each year. Remainder of principal $——— due on the —— day of ————, 18——. U. S. vs. S. P. R. R. Co., et al. No. 878. Defendants' Exhibit No. 1. Stephen Potter, Special Examiner.

Defendants' Exhibit No. 2.

G. 326. (3-4-87-1000.)

Southern Pacific Railroad Company.

No.———.

LAND DEPARTMENT.

Article of Agreement made at San Francisco, California, this —— day of ————, A. D. 18——, between the Southern Pacific Railroad Company, party of the first part, and ————, of ———— County, State of ————, part—— of the second part.

The said party of the first part, in consideration of the agreements of the said part—— of the second part herein contained, hereby agrees to sell unto the said part—— of the second part, the following tract— of land, situated in the County of ————, State of California, to wit: and known and designated on the public surveys of the United States as ————————, of Section No. —— in Township ——, of Range ——, —— Base and Meridian, containing ———/100 Acres, for the sum of ———/100 Dollars, United States Gold Coin, of which the said part—— of the second part ha— this day paid the sum of ——— /100 Dollars, with ———/100 Dollars, one years' interest on the remainder of said purchase money; the remainder of said principal sum, amounting to ———/100 Dollars, United States Gold Coin, with interest thereon, annually in advance, at the rate of seven per cent. per annum, to be paid by the said part—— of the second part on or before the —— day of ————, 18——.

And the said party of the first part hereby further agrees that upon the punctual payment of said purchase money and interest, and the strict and faithful performance by the said part—— of the second part, ——— legal representatives *of* assigns, of all the agreements herein contained, then the said party of the first part will cause to be made and exected to the said part—— of the second part, ——— heirs and assigns, upon request and surrender of this contract, a deed of grant, bargain and sale, for the conveyance of said premises, reserving, however, for railroad purposes, a strip of land one hundred feet wide, lying equally on each side of the track of the rail-

road of said Company, and all branch railroads now or hereafter constructed thereon, and the right to use all water needed for the operating and repair of said railroads, and subject also to the reservation and condition, that the said purchaser—, ——— heirs and assigns, shall erect and maintain good and sufficient fences on both sides of said strip or strips of land, and also reserving all claim of the United States to the same as mineral land.

And the said part——of the second part hereby agree—to pay to the said Southern Pacific Railroad Company, its successors or assigns, the said sum of ———/100 Dollars, United States Gold Coin, of the present standard of value, with interest thereon, annually in advance, at the rate of seven per cent per annum, at its office in the city of San Francisco, on or before the —— day of ———, 18——, both principal and interest payable in United States Gold Coin of the present standard of value, and until the payment of said purchase money and interest, will permit no strip or waste to be made on said premises, and no wood or growing trees to be cut thereon, except for necessary fuel for the family of the legal occupant under this contract, and for the erection of buildings or fences, without the previous written consent of the said party of the first part. And if the said part—— of the second part shall fail to make punctually any of said payments of interest or principal, or shall fail to comply strictly with any of the stipulations of this contract, then the said party of the first part, its successors or assigns, shall have the right to enter upon and take possession of the said premises, with all the improvements thereon.

It is further mutually agreed and understood, that the said part—— of the second part shall have the immediate possession and enjoyment of said premises, and, if the same be in the adverse possession of a third party, the right to use at his own cost and charge the name of the party of the first part, to recover the same by action. And that in consideration of such possession and enjoyment he will pay all taxes and assessments that may be, at any time, imposed upon said premises. And it is further agreed that, should said part—— of the second part fail to pay such taxes or assessments, or any part thereof, at any time when the same shall become due, the said party of the first part may pay the same, and add the amount thereof to the price to be paid for said premises, and such taxes or assessments with interest at the rate of seven per cent per annum shall be paid before said part—— of the second part shall be entitled to a conveyance of said premises.

The part—— of the second part hereby agrees to pay $3.00 for expenses of the acknowledgments to the Deed that shall be issued on this Contract.

This Contract shall not be assignable, except upon the consent of said party of the first part, and the written promise of the assignee— to perform all the undertakings and promises of the said part—— of the second part as above set forth.

In Testimony Whereof, the said party of the first part

has caused these presents to be signed in duplicate by its Secretary, and Land Agent, and the said part—— of the second part ha— signed ——— name— hereto.

_____

Land Agent.

_____,

Secretary. _____ [Seal]

_____ [Seal]

————, the part—— of the second part in the within Contract No. ——— for and in consideration of —— Dollars, to ——— in hand paid do—— hereby sell, assign and transfer all ——— right, title, interest and claim in and to the within described tract— or parcel— of land and; and the within contract No. ——— unto ———— h—— heirs and assigns forever, subject to the stipulations and conditions therein contained, which are to be performed by said assignee.

Given under ——— hand— and seal—, this —— day of ————, A. D. 18——.

_____ [Seal]

_____ [Seal]

State of California, }
—— County of ————. } ss.

On this —— day of ———— in the year one thousand eight hundred and ——— before me ————, a ——— —— in and for said County, personally appeared ——— ——— known to me to be the person— whose name— —— subscribed to the above instrument, and acknowledged to me that ——— executed the same.

In witness whereof, I have hereunto set my hand and affixed my official seal, the day and year in this certificate first above written.

_____

Notary Public.

On this —— day of ————, 18——, in consideration of the above and foregoing assignment to me, ——— hereby agree with the assignor therein named and with the Southern Pacific Railroad Company, to do and perform all the stipulations and conditions in the within contract, required to be done and performed by the part—— thereto of the second part.

———————— [Seal]

———————— [Seal]

P. O. Address ————

San Francisco, Cal., ————, 18——.

The Southern Pacific Railroad Company hereby consents to the above assignment to ————.

_____

By ————————

Its Land Agent.

[Endorsed]: No. ———. Contract for a Deed. Southern Pacific R. R. Company to ————. Dated ——— 18——. Interest $——— due on the —— day of ——— of each year. Remainder of principal $———, due on the ——— day of ———— ,189—. U. S. v. S. P. R. R. Co., et al. No. 878. Defendant's Exhibit No. 2. Stephen Potter, Special Examiner.

Defendants' Exhibit No. 3.

Southern Pacific Railroad Company.

LAND DEPARTMENT.

No. 3435.

This agreement, made at San Francisco, California, this Seventeenth (17) day of April, A. D. 1884, between the Southern Pacific Railroad Company, party of the first part, and J. M. Griffith, of the County of Los Angeles, State of California, party of the second part,

Witnesseth: That the party of the first part, in consideration of the covenants and agreements of the party of the second part hereinafter contained, agrees to sell to the party of the second part, the following Tracts of Land, situated in the County of Los Angeles, State of California, and known and designated on the public surveys of the United States as Lot One in northwest quarter (Lot 1 in N. W. ¼), Fractional southwest quarter (Fracl. S. W. ¼), Lot Four in southeast quarter (Lot 4 in S. E. ¼), or all of fractional Section Thirty-five (35) Township One (1) South, Range Nine (9) West, San Bernardino Base and Meridian, containing One hundred and seventy-six 00/100 Acres, for the sum of Eight hundred and eighty ($880.00/100) Dollars, Gold Coin of the United States.

And the party of the second part, in consideration of the premises, agrees to buy the land hereinbefore described, and to pay to the party of the first part the said sum of Eight hundred and eighty ($880.00/100) Dollars, as follows, to wit:

One hundred and seventy-six ($176.00/100) Dollars, and $49.28/100 one year's interest in advance on the remainder, in United States Gold Coin of the present standard of value, on the execution of this Contract, and the remainder, to wit; the sum of Seven hundred and four ($704.00/100) Dollars, with interest thereon, annually in advance, at the rate of seven per cent per annum, both in United States Gold Coin of the present standard of value, at its office in the City and County of San Francisco, on or before the Seventeenth (17) day of April, 1889; and also, to pay all taxes and assessments that may at any time be levied or imposed upon said premises or any part thereof; and if the party of the second part shall fail to pay such taxes and assessments, or any part thereof, at any time when the same shall become due, then the said party of the first part may pay the same; and all sums so paid by the party of the first part shall be added to and become part of the unpaid remainder, and shall bear interest at the same rate, and be paid in the same manner, and at the same time and place hereinbefore provided for the payment of said remainder and the interest thereon.

It is further agreed, that upon the punctual payment of said purchase money, interest, taxes and assessments, and the strict and faithful performance by the party of the second part, his legal representatives or assigns, of all the agreements herein contained, the party of the first part will, after the receipt of a patent therefor from the United States, upon demand and the surrender of this instrument, execute and deliver to the party of the second part, his heirs or assigns, a grant, bargain and

sale deed of said premises, reserving all claim of the United States to the same as mineral land.

It is further agreed, that until the full payment of said purchase money, interest, taxes and assessments, no strip or waste shall be made on said premises, and that no wood or growing trees shall be cut thereon, except for necessary fuel for the family of the legal occupant under this contract, and for the erection of buildings or fences on said land, without the previous written consent of the party of the first part.

It is further agreed, that the party of the second part may at once enter upon, take and hold possession of said premises, provided, however, that if the party of the second part shall fail to make any of said payments of remainder or interest, taxes or assessments as herein provided, or shall fail to comply strictly with any of the stipulations of this Contract, then this right shall cease, and the party of the first part, its successors or assigns, may, without notice, enter upon, take and hold possession of the said premises with all the improvements thereon.

It is further agreed, between the parties hereto, that the party of the first part claims all the tracts hereinbefore described as part of a grant of lands to it by the Congress of the United States; that patent has not yet issued to it for said tracts; that it will use ordinary diligence to procure patents for them; that as, in consequence of circumstances beyond its control, it sometimes fails to obtain patent for lands that seem to be legally a portion of its said grant; therefore, nothing in this instrument shall be considered a guarantee or assurance

that patent or title will be procured; that in case it be finally determined that patent shall not issue to said party of the first part for all or any of the tracts herein described, it will, upon demand, repay (without interest), to the party of the second part, all moneys that may have been paid to it by him on account of any of such tracts as it shall fail to procure patent for, the amount of repayment to be calculated at the rate and price per acre, fixed at this date for such tracts by said party of the first part, as per schedule on Page 3 hereof; that said lands being unpatented, the party of the first part does not guarantee the possession of them to the party of the second part, and will not be responsible to him for damages or costs in case of his failure to obtain and keep such possession.

It is further agreed, that if the party of the first part shall obtain patent for part of the lands herein described, and shall fail to obtain patent for the remainder of them, this contract shall in all its provisions be and remain in full force and virtue as to the tracts patented, and shall, except as to repayments herein provided for, be null and void as regards those tracts for which it shall be finally determined that patents cannot be obtained.

It is further agreed, that the party of the second part will never deny that the tracts herein described, or any part of them, are a part of said grant, and will do no act to hinder, delay or impede the obtaining of patent for them by the party of the first part; and that he will not obtain or hold possession of all or any of them adversely to said party of the first part.

It is further agreed, that this contract shall not be assignable, except by endorsement, and with the written consent of the party of the first part, and the written promise of the assignee to perform all the undertakings and promises of the party of the second part as above set forth.

In testimony whereof, the party of the first part has caused these presents to be signed in duplicate by its Secretary, and Land Agent, and the party of the second part has signed his name hereto.

Fraction.	Sec.	Tp.	Range.	B. & M.	No. of Acres.	Rate per Acre.	Amount.
Fractional.	35	1 S.	9 W.	S. B.	176	$5.00	$880.00

JEROME MADDEN,
Land Agent.

J. L. WILLCUTT,
Secretary.

J. M. GRIFFITH, [Seal.]

_____ [Seal]

SCHEDULE of prices at which the lands described in this Contract have been sold this Seventeenth (17) day of April, 1884.

JEROME MADDEN,
Land Agent.

J. M. Griffith the within named purchaser, for and in consideration of Ten dollars to him in hand paid, does

hereby sell, assign and transfer all his right, title, interest and claim in and to the within described tract or parcel of land, and the within contract No. 3435, unto C. M. Wright & Jane Lynch, their heirs and assigns forever, subject to the stipulations and conditions therein contained, which are to be performed by said assignee.

Given under my hand and seal, this 31st day of December, A. D. 1887.

J. M. GRIFFITH, [Seal]

———————— [Seal]

County of Los Angeles. }
State of California, } ss.

On this 31st day of December, in the year one thousand eight hundred and eighty-seven, before me, H. W. O'Melveny, a Notary Public in and for said County, personally appeared J. M. Griffith, known to me to be the person whose name is subscribed to the above instrument, and acknowledged to me that he executed the same:

In witness whereof, I have hereunto set my hand and affixed my official seal, the day and year in this certificate first above written.

[Notarial Seal] H. W. O'MELVENY,

Notary Public.

————, 18——.

In consideration of the above and foregoing assignment to ————, ————, hereby agrees with the said ————, and with the Southern Pacific Railroad Company, that ——— will do and perform all the stipu-

lations and conditions in the said contract No. ———, required to be done and performed by the said ———.

——————— [Seal]

——————— [Seal]

———, 18—.

The Southern Pacific Railroad Company hereby consents to the above assignments to ———.

———————,

[Endorsed]: Patent No. 9—.

~~Unpatented~~ Lands.

No. 3435.

Contract

for a

Deed

Southern Pacific R. R. Company

to

J. M. Griffith.

Interest, $49.28/100, due on the 17th day of April, of each year.

Remainder of principal, $704.00/100, due on the 17th day of April, 1889.

(Written in lead pencil:) For Deed C. Cabot, May 8, 1889.

(In red ink initials:) B. & Br.

(Written across endorsement in black ink:) Canceled. May 17th, 1889, and Deed No. 3435, issued. See inside.

(Written across the fact of first page in black ink:)

This contract canceled May 17th, 1889, and Deed No. 3435, dated May 17th, 1889, issued by the Southern Pacific Railroad Company and D. O. Mills, and Gerrit L.

Lansing, its Trustees to C. M. Wright and Jane Lynch, for Lots 1, 2, 3 and 4 and S. ½ of S. W. ¼ being all of fracl. Sec. 35, T. 1 S., R. 9 W., S. B. B. and M. 176.00 acres in Los Angeles County, California. All reservations stricken out of Deed except mineral clause in Deed that the S. P. R. R. Co., is not liable for unpaid taxes.

CERTIFICATE OF FULL PAYMENT OF REMAINDER OF PURCHASE MONEY.

B. & R.

Southern Pacific Railroad Company,

LAND DEPARTMENT.

$704.00 San Francisco, Cal., May 10th, 1889.

This is to certify that Mr. J. M. Griffith, by C. M. Wright and Jane Lynch, Assignees, has this day paid to the Land Department of the S. P. R. R. Co., the sum of Seven hundred and four Dollars, in United States Gold Coin, being in full payment of the remainder ($704.) due the S. P. R. R. Co., on Contract for Deed No. 3435; said sum being made up as follows:

Cash received $704.00

Part of prepaid interest for —— year, from ————, 188——, to ————, 188——, refunded by S. P. R. R. Co. ..... $——

$704.00

JEROME MADDEN,
Land Agent, S. P. R. R. Co.
BURR.

(Stamped on face:) Land Dept. S. P. R. R. San Francisco, May 10, 1889.

CERTIFICATE OF PAYMENT OF INTEREST.

Southern Pacific Railroad Company,

LAND DEPARTMENT.

B. & R.

$2.90. San Francisco, Cal., May 10th, 1889.

This is to certify that Mr. J. M. Griffith, by C. M. Wright and Jane Lynch, Assignees, has this day paid to the Land Department of the S. P. R. R. Co., the sum of Two-90 Dollars, in United States Gold Coin, being in payment of part of the 6th year's interest, from April 17, 1889, to May 10th, 1889, on $704.00 remainder due the S. P. R. R. Co., on Contract for Deed No. 3435.

JEROME MADDEN,
Land Agent, S. P. R. R. Co.
BURR.

(Stamped on face:) Land Dept. S. P. R. R. San Francisco, May 10, 1889.

I hereby certify that the foregoing document is a full, true and correct copy of the original evidence introduced by the defendants in the case of the United States of America vs. The Southern Pacific Railroad Company, et al., numbered 878 on the docket of the United States Circuit Court, Ninth Circuit, Southern District of California, as Defendants' Exhibit No. 3.

San Francisco, May 11th, 1900.

STEPHEN POTTER,
Special Examiner.

No. 878. U. S. A. vs. S. P. R. R. Co., et al. Defendants' Exhibit No. 3. Stephen Potter, Special Examiner.

DEFENDANT'S EXHIBIT No. 4.

No. 9 – Statement exhibiting land concessions by Acts of Congress to States and corporations, &c., - continued.

States.	Date of Laws.	Statistics	Page.	Name of road.	Mile Limits.	Estimated quantity embraced in the limits of the grant.	Estimated quantity which the Company will receive from the grant.	Number of acres certified or patented for the year ending June 30 1875.	Number of acres certified or patented up to June 30, 1875.
Corporations	July 27, 1866	14	292	Southern Pacific	20 and 30	6,000,000.00	3,750,000.00	394447.09	400,412.42
Do.....	Mar. 3, 1871	16	579	Southern Pacific from a point at or near Tehachapa Pass To the Texas Pacific Railroad at or near Colorado River.	20 and 30	3520,000.00	3,000,000.00	.....	.....

U. S. A. vs S. P. R. R. Co. et al. } # 878

Defendants' Exhibit No 4

Stephen Potter
Special Examiner.

I hereby certify that the foregoing document is a full, true and correct copy of two items contained on page 409 of the Annual Report of the Commissioner of the General Land Office for the fiscal year ending June 30th, 1875, exhibited in evidence by the defendants in the case of the United States of America vs. The Southern Pacific Railroad Company, et al., numbered 878 on the docket of the United States Circuit Court, Ninth Circuit, Southern District of California, said two items being marked upon said page and referred to as Defendant's Exhibit No 4.

San Francisco, May 11th, 1900.

Stephen Potter

Special Examiner.

Defendants' Exhibit No. 5.

G. 326. (6-29-87-1000.-)

Southern Pacific Railroad Company.

LAND DEPARTMENT.

No. 8010.

Article of Agreement, made at San Francisco, California, this Eleventh (11th) day of August, A. D. 1887, between the Southern Pacific Railroad Company, party of the first part, and H. S. Bridge, of the City and County of San Francisco, State of California, party of the second part.

The said party of the first part, in consideration of the agreements of the said party of the second part herein contained, hereby agrees to sell unto the said party of the second part, the following Tract of Land, situate in the County of Los Angeles, State of California, to wit: and known and designated on the public surveys of the United States as The north west quarter of the south west quarter (N. W. ¼ of S. W. ¼) of Section No. One (1), in Township One (1) South, of Range Fifteen (15) west, San Bernardino Base and Meridian, containing Forty 00/100 (40.00/000) acres, for the sum of one hundred 00/100 ($100.00/100) Dollars, United States Gold Coin, of which sum the said party of the second part has this day paid the sum of Twenty 00/100 ($20.00/100) Dollars, with Five 60/100 ($5.60/100) Dollars, one year's interest on the remainder of said purchase money; the remainder of said principal sum, amounting to Eighty 00/000 ($80.00/100) Dollars, United

States Gold Coin, with interest thereon annually in advance, at the rate of seven per cent per annum, to be paid by the said party of the second part on or before the Eleventh (11th) day of August, 1892.

And the said party of the first part hereby further agrees that upon the punctual payment of said purchase money and interest, and the strict and faithful performance by the said party of the second part, his legal representatives or assigns, of all the agreements herein contained, then the said party of the first part will cause to be made and executed to the said party of the second part, his heirs and assigns upon request and surrender of this contract, a deed of grant, bargain and sale, for the conveyance of said premises; reserving all claim of the United States to the same as mineral land.

And the said party of the second part hereby agrees to pay to the said Southern Pacific Railroad Company, its successors or assign, the said sum of Eighty 00/100 ($80.00/100) Dollars, United States Gold Coin of the present standard of value, with interest thereon, annually in advance, at the rate of seven per cent per annum, at its office in the City of San Francisco, on or before the 11th day of August, 1892, both principal and interest payable in United States Gold Coin of the present standard of value, and until the full payment of said purchase money and interest, will permit no strip or waste to be made on said premises, and no wood or growing trees to be cut thereon, except for necessary fuel for the family of the legal occupant under this contract, and for the erection of buildings or fences, with-

out the previous written consent of the said party of the first part. And if the said party of the second part shall fail to make punctually any of said payments of interest or principal, or shall fail to comply strictly with any of the stipulations of this contract, then the said party of the first part, its successors or assigns, shall have the right to enter upon and take posession of the said premises, with all the improvements thereon.

It is further mutually agreed and understood, that the said party of the second part shall have the immediate possession and enjoyment of said premises, and, if the same be in the adverse possession of a third party, the right to use at his own cost and charge the name of the party of the first part to recover the same by action. And that in consideration of such possession and enjoyment he will pay all taxes and assessments that may be, at any time, imposed upon said premises. And it is further agreed that, should said party of the second part fail to pay such taxes or assessments, or any part thereof, at any time when the same shall become due, the said party of the first part may pay the same, and add the amount thereof to the price to be paid for said premises, and such taxes or assessments with interest at the rate of seven per cent per annum shall be paid before said party of the second part shall be entitled to a conveyance of said premises.

The party of the second part hereby agrees to pay $3.00 for expenses of the acknowledgments to the Deed that shall be issued on this contract.

This Contract shall not be assignable, except upon

the consent of said party of the first part, and the written promise of the assignee to perform all the undertakings and promises of the said party of the second part as above set forth.

In testimony whereof, the said party of the first part has caused these premises to be signed in duplicate by its Secretary and Land Agent, and the said party of the second part has signed his name hereto.

JEROME MADDEN,
Land Agent.

J. L. WILLCUTT,
Secretary.

H. S. BRIDGE, [Seal]
_____, [Seal]

Br. J. C.
G. T. P.

H. S. Bridge, the party of the second part in the within Contract No. 8010 for and in consideration of Ten (10) Dollars to him in hand paid does hereby sell, assign and transfer all his right, title, interest and claim in and to the within described tract or parcel of land, and the within Contract No. 1810 unto Leander Shores, his heirs, and assigns forever, subject to the stipulations and conditions therein contained, which are to be performed by said assignee.

Given under my hand and seal this twenty-seventh day of February, A. D. 1896.

H. S. BRIDGE, [Seal]
_____ [Seal]

State of California,
City and County of San Francisco. } ss.

On this twenty-seventh day of February, in the year one thousand eight hundred and ninety-six before me, F. C. Mosebach, a Notary Public in and for said City and County, personally appeared H. S. Bridge, known to me to be the person whose name is subscribed to the above instrument, and acknowledged to me that he executed the same.

In witness whereof, I have hereunto set my hand and affixed my official seal, the day and year in this certificate first above written.

[Notarial Seal] F. C. MOSEBACH,
Notary Public in and for the City and County of San Francisco, State of California.

On this —— day of ————, 18——, in consideration of the above and foregoing assignment to me, ———— hereby agree with the assignor therein named and with the Southern Pacific Railroad Company, to do and perform all the stipulations and conditions in the within contract, required to be done and performed by the part —— thereto of the second part.

————————, [Seal]
————————, [Seal]
P. O. Address, ————.
San Francisco, Cal., ————, 18——.

The Southern Pacific Railroad Company hereby consents to the above assignment to ————.

————,

B————,

Its Land Agent.

(Endorsed on back): No. 8010.

Contract

for a

Deed.

Southern Pacific R. R. Company

to

H. S. Bridge.

Dated August 11th, 1887.

Interest $5.60/100, due on the 11th day of August, of each year.

Remainder of principal, $80.00/100, due on the 11th day of Aug. 1892.

(Written across above endorsement in black ink:) This contract canceled February 28, 1896, and Deed No. 8010 issued. See inside.

Br. & R.

(Also endorsed in lead pencil:) For Deed H. S. Bridge, 622 Market St. S. F. Office, Feb. 27, 1896.

(Written across the face of page 1 in black ink:) This contract No. 8010, canceled February 28, 1896, and Deed No. 8010, dated February 28, 1896, issued by the Southern Pacific Railroad Company and D. O. Mills, Trustee, to Leander Shores for the N. W. ¼ of S. W. ¼ of Sec. 1, T. 1 S., R. 15 W., S. B. M., 40.00 Acres in Los Angeles County, California. All reservations stricken out of

deed except mineral. Clause in deed that the Railroad Company is not liable for unpaid taxes since Aug. 11, 1887.

CERTIFICATE OF FULL PAYMENT OF REMAINDER OF PURCHASE MONEY.

Southern Pacific Railroad Company,

LAND DEPARTMENT.

San Francisco, Cal., Feby. 27th, 1896.

$80.00.

This is to certify that H. S. Bridge has this day paid to the Land Department of the S. P. R. R. Co., the sum of Eighty Dollars, in United States Gold Coin, being in full payment of the remainder ($80.00) due the S. P. R. R. Co., on Contract for Deed No. 8010; said sum being made up as follows:

Cash received,..... ....$80.00

Part of prepaid interest for year, from ———, 189—— to ———, 1890, refunded by S. P. R. R. C.... ... .$——

Total..... ....$80.00

JEROME MADDEN,
Land Agent S. P. R. R. Co.
BURR.

(Stamped across face.) Land Dept. S. P. R. R., San Francisco, Feb. 27, 1896.

CERTIFICATE OF PAYMENT OF INTEREST.

Southern Pacific Railroad Company,

LAND DEPARTMENT.

$3.00. San Francisco, Cal., Feby. 27th, 1896.

This is to certify that H. S. Bridge, has this day paid to the Land Department of the S. P. R. R. Co., the sum of Three Dollars, in United States Gold Coin, being in payment of the part of 9th year's interest, to Feby. 27th, 1896, on $80.00 remainder due the S. P. R. R. Co. on Contract for Deed No. 8010.

JEROME MADDEN,
Land Agent S. P. R. R. Co.
BURR.

(Stamped across face:) Land Dept. S. P. R. R. San Francisco, Feb. 27, 1896.

I hereby certify that the foregoing document is a full, true and correct copy of the original evidence introduced by the defendants in the case of the United States of America vs. The Southern Pacific Railroad Company, et al. numbered 878 on the docket of the United States Circuit Court, Ninth Circuit, Southern District of California, as Defendants' Exhibit No. 5.

San Francisco, May 11th, 1900.

STEPHEN POTTER,
Special Examiner.

No. 878. U. S. A. vs. S. P. R. R. Co. et al. Defendants' Exhibit No. 5. Stephen Potter, Special Examiner.

[Endorsed]: No. 878. In the Circuit Court of the United States, Ninth Circuit, Southern District of California. United States of America, Complainant, vs. The Southern Pacific Railroad Company, et al., Defendants. Report of special examiner at San Francisco, California. Filed July 3, 1900. Wm. M. Van Dyke, Clerk.

In the Circuit Court of the United States, Ninth Circuit, Southern District of California.

THE UNITED STATES,
Complainant,
vs.
THE SOUTHERN PACIFIC RAILROAD COMPANY et al.,
Defendants.

Stipulation as to Defendant Alice V. Slosson.

It is stipulated that the defendant, Alice V. Slosson, in the year 1880, for a valuable consideration purchased from the defendant, The Southern Pacific Railroad Company, lots one (1) and two (2) in the northeast quarter of section eleven of township one south, range twelve west, S. B. B. & M., containing 34.4 acres of land, as per United States surveys, and that it is through inadvertence and incorrectly that her name is written "Alice B. Slosson" in "Contract 882" of "Exhibit A" of the answer of The Southern Pacific Railroad Company et al. filed herein

and in any and all other pleadings and papers wherein it is so written.

H. V. REARDON,
Solicitor for M. L. Wicks et al.
WM. SINGER, Jr.,
Solicitor for So. Pac. R. R. Co. et al.
T. M. STEWART,
Solicitor for Alice V. Slosson.

[Endorsed]: Orig. No. 878. U. S. Circuit Court, Ninth Circuit, Southern District of California. The United States, Complainant, vs. The Southern Pacific Railroad Company et al., Defendants. Stipulation. Filed Jul. 30, 1900. Wm. M. Van Dyke, Clerk. T. M. Stewart, Los Angeles, Cal., Solicitor for Alice V. Slosson.

In the United States Circuit Court, Ninth Circuit, Southern District of California.

THE UNITED STATES,
Complainant,
vs.
THE SOUTHERN PACIFIC RAILROAD COMPANY et al.,
Defendants.

Opinion.

By its bill the complainant sets up, among other things, the grants made by Congress to the Atlantic and Pacific Railroad Company and to the defendant Southern Pacific Railroad Company by the act of July 27, 1866 (14 Stats.

292), and the grant to the defendant railroad company made by the joint resolution of June 28, 1870, (16 Stats. 382), and by the act of March 3, 1871 (16 Stats. 573), and the subsequent act of Congress of July 6, 1886 (24 Stats. 123), declaring forfeited the grant to the Atlantic and Pacific Company of July 27, 1866, and restoring to the public domain all of the odd-numbered sections within thirty miles on each side of its line of road between the eastern boundary of California and the Pacific Ocean at San Buena Ventura.

It is alleged that all of the lands described in Exhibit "A" annexed to and made part of the bill, situated in California and consisting of separate and distinct tracts of the public lands and aggregating 30,067.79 acres, fell within the thirty-mile limits of the Atlantic and Pacific grant; that regardless of the rights of the complainant, the defendant railroad company, as well as the other defendants, claim some title and interest in the lands described in Exhibit "A" annexed to the bill, under some or all of the aforesaid acts of Congress granting lands to the defendant railroad company, the precise nature and extent of which claims are known to the complainant, but which it alleges are unfounded; that subsequent to the passage of the aforesaid act of March 3, 1871, and prior to the year 1896, patents were erroneously issued by the department of the interior to the defendant railroad company in due form, purporting to convey to that company the lands described in the said Exhibit "A."

It is alleged that the grants made to the defendant railroad company by section 18 of the act of July 27, 1866, by the joint resolution of June 28, 1870, and by section

23 of the act of March 3, 1871, were made upon the same terms, conditions, restrictions, and limitations as the grant to the Atlantic and Pacific railroad company by the act of July 27, 1866, by section 20 of which latter act Congress expressly reserved the right to alter, amend, or appeal that act. The bill also sets up the acts of Congress of March 3, 1887 (24 Stats. 556), February 12, 1896 (29 Stats. 6), and March 2, 1896 (29 Stats. 42). By section 1 of the act of March 3, 1887, the Secretary of the Interior was authorized and directed "to immediately adjust, in accordance with the decisions of the Supreme Court, each of the railroad land grants made by Congress to aid in the construction of railroads, and heretofore unadjusted." Sections 2 and 4 of the act are as follows:

"Sec. 2. That if it shall appear, upon the completion of such adjustments, respectfully (ively?), or sooner, that lands have been, from any cause, heretofore erroneously certified or patented, by the United States, to or for the use or benefit of any company claiming by, through, or under grant from the United States, to aid in the construction of a railroad, it shall be the duty of the secretary of the interior to thereupon demand from such company a relinquishment or reconveyance to the United States of all such lands, whether within granted or indemnity limits; and if such company shall neglect or fail to so reconvey such lands to the United States within ninety days after the aforesaid demand shall have been made, it shall thereupon be the duty of the Attorney General to commence and prosecute in the proper courts the necessary proceedings to cancel all patents, certifi-

cation, or other evidence of title heretofore issued for such lands, and to restore the title thereof to the United States."

"Sec. 4. That as to all lands, except those mentioned in the foregoing section, which have been so erroneously certified or patented as aforesaid, and which have been sold by the grantee company to citizens of the United States or to persons who have declared their intention to become such citizens, the person or persons so purchasing in good faith, his heirs or assigns, shall be entitled to the land so purchased, upon making proof of the fact of such purchase at the proper land office within such time and under such rules as may be prescribed by the Secretary of the Interior, after the grants respectively shall have been adjusted; and patents of the United States shall issue therefor, and shall relate back to the date of the original certification or patenting, and the Secretary of the Interior, on behalf of the United States, shall demand payment from the company which has so disposed of such lands of an amount equal to the government price of similar lands; and in case of neglect or refusal of such company to make payment as hereafter specified, within ninety days after the demand shall have been made, the Attorney General shall cause suit or suits to be brought against such company for the said amount: Provided, that nothing in this act shall prevent any purchaser of lands erroneously withdrawn, certified, or patented as aforesaid from recovering the purchase money therefor from the grantee company, less the amount paid to the United States by such company as by this act required: and provided, that a mortgage or pledge of said

lands by the company shall not be considered as a sale for the purpose of this act, nor shall this act be construed as a declaration of forfeiture of any portion of any land grant for conditions broken, or as authorizing an entry for the same, or as a waiver of any rights that the United States may have on account of any breach of said conditions."

By the act of February 12, 1896, Congress added the following proviso to section 4 of the act of March 3, 1887, just quoted:

"Provided further, that where such purchasers, their heirs or assigns, have paid only a portion of the purchase price to the company, which is less than the government price of similar lands, they shall be required, before the delivery of a patent for their lands, to pay to the government a sum equal to the difference between the portion of the purchase price so paid and the government price, and in such case the amount demanded from the company shall be the amount paid to it by such purchaser."

By the act of March 2, 1896, entitled "An act to provide for the extension of the time within which suits may be brought to vacate and annul land patents, and for other purposes," Congress declared, among other things, that "No patents to any lands held by a bona fide purchaser shall be vacated or annulled, but the right and title of such purchaser is hereby confirmed," with a proviso not pertinent to the present case.

Sections 2 and 3 of the act of March 2, 1896, are as follows:

"Sec. 2. That if any person claiming to be a bona fide purchaser of any lands erroneously patented or certified

shall present his claim to the Secretary of the Interior prior to the institution of a suit to cancel a patent or certification, and if it shall appear that he is a bona fide purchaser, the Secretary of the Interior shall request that suit be brought against the patentee, or the corporation, company, person, or association of persons for whose benefit the certification was made, for the value of said land, which in no case shall be more than the minimum government price thereof, and the title of such claimant shall stand confirmed. An adverse decision by the Secretary of the Interior on the bona fides of such claimant shall not be conclusive of his rights, and if such claimant, or one claiming to be a bona fide purchaser, but who has not submitted his claim to the Secretary of the Interior, is made a party to such suit, and if found by the court to be a bona fide purchaser, the court shall decree a confirmation of the title, and shall render a decree in behalf of the United States against the patentee, corporation, company, person, or association of persons for whose benefit the certification was made for the value of the land as hereinbefore provided. Any bona fide purchaser of lands patented or certified to a railroad company, and who is not made a party to such suit, and who has not submitted his claim to the Secretary of the Interior, may establish his right as such bona fide purchaser in any United States court having jurisdiction of the subject matter, or at his option as prescribed in sections three and four of chapter three hundred and seventy-six of the acts of the second session of the forty-ninth Congress.

"Sec. 3. That if at any time prior to the institution of suit by the Attorney General to cancel any patent or

certification of lands erroneously patented or certified, a claim is presented to the Secretary of the Interior by or on behalf of any person or persons, corporation or corporations claiming that such person or persons, corporation or corporations, is a bona fide purchaser or are bona fide purchasers of any patented or certified land by deed or contract, or otherwise, from or through the original patentee or corporation to which patent or certification was issued, no suit or action shall be brought to cancel or annul the patent or certification for said land until such claim is investigated in said Department of the Interior; and if it shall appear that such person or corporation is a bona fide purchaser as aforesaid, or that such persons or corporations are such bona fide purchasers, then no such suit shall be instituted, and the title of such claimant or claimants shall stand confirmed; but the Secretary of the Interior shall request that suit be brought in such case against the patentee, or the corporation, company, person or association of persons for whose benefit the patent was issued or certification was made for the value of the land as hereinbefore specified."

The bill alleges that more than ninety days prior to the commencement of the suit, the Secretary of the Interior demanded of the defendant railroad company a reconveyance and relinquishment to the United States of the lands so erroneously patented, with which demand the defendant railroad company refused and ever since has refused to comply; that prior to December 1, 1889, the defendant railroad company sold some of the said lands, or some interest therein, to numerous persons, but

that the complainant is not able to state the names of the persons to whom such lands have been sold in good faith, or the extent of the interest conveyed, or the amount paid by such purchasers respectively, or the dates of such payments, except as to those of the lands described in the said Exhibit "A," specifically set forth and described in Exhibit "B," annexed to the bill, which specific portions so described in Exhibit "B," it is alleged, were sold to numerous persons in good faith, and whose titles thereto were confirmed by the aforesaid act of Congress of March 2, 1896, and for which lands the defendant railroad company received more than $2.50 per acre.

It is further alleged that all of the lands described in Exhibit "A," annexed to the bill, and constituting the subject of the suit, are of the value of more than $2.50 per acre.

It is alleged that more than one thousand persons, among whom are the defendants, M. L. Wicks, Alice B. Slosson, Ivar A. Weid, James Mair, Pomona Land & Water Company, T. Banbury, Burdette Chandler, H. H. Linville, J. R. Nevin, Henry M. Loud, William Thorpe, and Fairmount Land & Water Company, a corporation, "sued as representatives of a class, have purchased, by immediate or mesne conveyances, from the defendant, Southern Pacific Railroad Company, certain tracts of land described in said Exhibit "A," to this bill, or some interest therein, and who are too numerous to be made parties to this bill, and that all of said persons claim an interest in such lands so purchased under and by virtue of said grants to the defendant, Southern Pacific Railroad Company, and said acts of March 3, 1887, February 12,

1896, and March 2, 1896, but the nature and extent of said claims are unknown to your orator, except as heretofore set forth, and your orator has joined as defendants, the persons above named as representing such numerous purchasers, and which persons fairly represent said purchasers."

It is alleged that on the 7th day of January, 1898, a suit brought by the present complainant against the defendant railroad company, and numbered 600, was depending in this court for the annulments of patents issued to certain lands, including those lands described in Exhibit "B" annexed to the bill herein, and that in its answer to the bill filed in that suit, the defendant railroad company alleged that the tracts of land described in Exhibit "B," annexed to the bill in the present suit, had been, prior to March 2, 1896, sold by the defendant railroad company to purchasers in good faith and for value, who were bona fide purchasers thereof within the meaning of the aforesaid acts of Congress, and that thereafter, upon issue joined in said suit No. 600, the testimony of Jerome Madden, general land agent of the defendant company, was taken in its behalf, in the course of which he testified that those lands had been so sold by said company to purchasers in good faith and for value, and that thereupon, the complainant in that suit, relying upon the truth of such averments and of such testimony, dismissed from said case No. 600 the lands described in Exhibit "B" annexed to the bill in the present suit, without prejudice; by reason of which the complainant herein avers that the defendant company ought to be and is estopped from denying that the lands described in Exhibit

"B" annexed to the bill herein were so sold by said company to purchasers in good faith, and for value, and ought to be and is estopped from questioning the right of the complainant herein to maintain the present suit.

The bill further alleges that a controversy has arisen and still exists between the complainant and the defendant railroad company as to the true meaning of the aforesaid acts of Congress of July 27, 1866, June 28, 1870, March 3, 1871, March 3, 1887, February 12, 1896, and March 2, 1896, and as to the respective rights and obligations of the complainant and the defendant railroad company thereunder; that said acts of Congress constitute a valid contract between the complainant and the defendant railroad company "whereby it was agreed and understood that where any land was erroneously certified or patented to said company and sold by said company to a bona fide purchaser, that the United States would grant to and confirm the title of the United States to such bona fide purchaser, and not to or for the benefit of said railroad company, and that in such case it was further agreed and understood that said railroad company would account to and pay over to the United States the value of such land, not exceeding the government price, and in case of a sale upon executory contract where less than the government price had been received, would account to and pay over to the United States, the amount received by said company upon such sales. Your orator further alleges that such construction and interpretation of said acts is disputed by the defendant railroad company, said company contending that it was not the title of the United States which was granted to and confirmed

to such bona fide purchasers, but that the United States confirmed the title to the lands so sold by said company to said railroad company, which inured through it to such purchasers, and that said railroad company is not under any obligation in law or in equity to pay to the United States the government price or any other price for such lands, and that said company is still entitled and empowered to recover from such purchasers, for the use and benefit of said company, the unpaid balance of the purchase price of such lands, amounting to many thousands of dollars, and, in pursuance of such claim, said company has instituted and still is instituting numerous suits to enforce such contracts against numerous persons who have purchased such lands from said company upon executory contracts, and where only a part of the purchase price has been paid, to the great embarrassment of your orator in the administration of public lands. Your orator further alleges that it expressly disclaims any purpose or desire to annul the title to any lands held by a bona fide purchaser from said railroad company, but desires to ascertain what lands and what interest in lands have been sold by said company to bona fide purchasers, and what sum or sums are still owing to your orator by said company, to the end that patents to such lands not so sold may be annulled, and that said railroad company may be required to account to and pay over to your orator the government price of such lands as have been sold, and to the further end that your orator may protect and confirm the title of those bona fide purchasers who are entitled to receive a patent or confirmation of title from the

United States by virtue of such acts of Congress of March 3, 1887, and March 2, 1896."

The prayer of the bill is, that the court will determine the true construction of the acts of Congress mentioned, and define the rights and obligations of the complainant and the defendant railroad company thereunder, and will determine the right and title of the complainant to the lands described in Exhibit "A" annexed to the bill, and determine which of the said lands have been sold by the defendant railroad company to bona fide purchasers and will annul the patents of such of the said lands as have not been sold by said company to bona fide purchasers, and quiet the title of the complainant thereto; that the defendant railroad company may be enjoined from commencing, prosecuting or maintaining any suit against any person for the recovery of the purchase price of any of the lands described in said Exhibit "A," or for the foreclosure of any contract respecting any of such lands; that as to those lands which have been sold by the defendant railroad company to bona fide purchasers, it be required to account to the complainant for such sums as have been received by it from sales thereof, and to pay over such sums to the complainant, and for such other and further relief as to the court may seem equitable.

Answers were filed to the bill by each of the defendants named therein (other than the railroad company) and also by numerous other persons claiming portions of the lands described in Exhibit "B" annexed to the bill, as bona fide purchasers thereof, each and all of which deny the alleged title of the United States and allege

that the lands in controversy were granted to the defendant railroad company by the acts of Congress of July 27, 1866, June 28, 1870, and March 3, 1871, and that they, respectively, are bona fide purchasers of portions thereof from that company.

The answer of the defendant railroad company also puts in issue the alleged title of the complainant, and sets up that all of the lands here involved were embraced by the aforesaid grants to it by Congress, and also alleges, among other things, that on or about April 1, 1875, it executed to the defendant D. O. Mills, and Lloyd Tevis, as trustees, a deed of trust, conveying to them all of the lands described in Exhibit "A" annexed to the bill herein, to secure the payment of negotiable mortgage bonds to be issued and sold by the company, and that prior to March 3, 1887, the company duly issued, sold and delivered negotiable bonds, secured by the mortgage, of the face value of thirty-nine million two hundred and eighty-five thousand dollars, to bona fide purchasers thereof, who purchased the same without notice of any claim of the United States to or respecting any of the said lands, and that each and all of said purchasers paid the full value of the bonds, and that ten millions of dollars in value of them are still outstanding and unpaid in the hands of the purchasers; that prior to the commencement of the present suit the defendant Homer S. King was duly substituted for Tevis as such trustee; that on August 25, 1888, the defendant railroad company executed to the defendant Central Trust Company of New York a further mortgage or deed of trust conveying to it all of the lands involved herein,

as security for the payment of certain negotiable bonds to be issued and sold by the defendant railroad company, which bonds, of the face value of eleven million three hundred and seventy-five thousand dollars were, prior to the year 1893, duly issued, sold, and delivered to bona fide purchasers, who purchased the same in good faith and without notice of any claim on the part of the United States to or respecting any of the lands in question, and that on September 15, 1893, the defendant railroad company executed to the defendant Central Trust Company of New York a further mortgage or deed of trust covering the same lands to secure the payment of other and further negotiable mortgage bonds, which were thereafter likewise issued, sold and delivered to bona fide purchasers, without notice of any claim of the United States to or respecting any of the said lands.

Annexed to the answer of the defendant railroad company is an exhibit which it is averred correctly sets forth the full particulars of sales made by the defendant railroad company of the lands described in Exhibits "A" and "B" annexed to the bill of complaint, and it is alleged that each of the sales set forth in the exhibit annexed to the answer was made to a bona fide purchaser, and a citizen of the United States, who purchased in good faith and for the full value of the land at the time of the purchase, without notice that the United States had or claimed to have any interest whatever in or to the land so purchased, and who in good faith believed that in making such purchase he was acquiring the true title to the land bought.

The answer denies that the defendant railroad com-

pany is in anywise accountable or indebted to the complainant for moneys received by it for any of the lands referred to in the bill, and alleges that the United States has never demanded that the defendant railroad company pay to it any price or sum for the land so sold.

The answer also denies that the defendant Wicks, and other of the individual defendants similarly situated, represent a class of persons or any person or persons other than themselves, and their predecessors in interest, holding title under the defendant railroad company.

In so far as the mortgagees are concerned, it is sufficient to say that it has been heretofore held by this court, as well as by the Supreme Court of the United States, that they have no other or greater rights than the defendant railroad company. United States vs. Southern Pacific Railroad Company, No. 600, 86 Fed. Rep. 962; United States vs. Southern Pacific Railroad Company, Nos. 587, 662, 675, 94 Fed. Rep. 427; Southern Pacific Railroad Company vs. United States, 168 U. S. 1. Further reference to them is, therefore, unnecessary.

The agreed statement of facts shows that each of the separate and distinct tracts of the public lands forming the subject of the suit, specifically described in Exhibit "A" annexed to the bill, and aggregating 30,067.79 acres, fell within the thirty-mile limits of the Atlantic and Pacific grant; and, as I understand the evidence, none of them are embraced by the common place limits of that grant and the grant made to the defendant railroad company by the same act of July 27, 1866, but do fall within the limits of the branch line grant to that company. In the case of Southern Pa-

cific Railroad Company vs. United States, 183 U. S. 519, it was held that the United States, having by the forfeiture act of July 6, 1886, become possessed of all the rights and interest of the Atlantic and Pacific Railroad Company in the grant made to it by the act of July 27, 1866, within the limits of California, had an equal undivided moiety in all the odd-numbered sections which lie within the conflicting place limits of that grant and of that made to the defendant Southern Pacific Railroad Company by the same act of July 27, 1866, by which the latter company acquired the other equal undivided moiety thereof. But that case left undisturbed the preceding decisions by which it has been adjudged that none of the public lands within the thirty-mile limits of the grant made by Congress on the 27th day of July, 1866, to the Atlantic and Pacific Railroad Company ever passed to the defendant Southern Pacific Railroad Company by virtue of the grant made by Congress to that company by the joint resolution of June 28, 1870, or by the act of March 3, 1871. United States vs. Southern Pacific Railroad Company, 146 U. S. 570; United States vs. Colton Marble and Lime Company, 146 U. S. 615; Southern Pacific Railroad Company vs. United States, 168 U. S. 1; United States vs. Southern Pacific Railroad Company, 68 Fed. Rep. 962; Southern Pacific Railroad Company vs. United States, 98 Fed. Rep. 27. It results that the defendant Southern Pacific Railroad Company never acquired any interest in any portion of the lands in suit.

The case further shows that the officers of the government, in the due and orderly course of proceedings,

but misinterpreting the laws applicable thereto, issued in due and proper form to the defendant railroad company patents to the tracts of public land described in Exhibit "A" annexed to the bill, certain specific tracts of which (described in Exhibit "B" annexed to the bill) the complainant alleges the defendant railroad company thereafter conveyed, and certain other specific tracts of which contracted to convey, to various bona fide purchasers, a number of whom were made defendants to the bill individually and, as contended on the part of the complainant, as representatives of the balance of such purchasers. That the government title to the lands thus patented to the defendant railroad company thereupon passed to that company is not questioned, and it is equally clear that, under the decisions above cited, the title was erroneously so conveyed, and wholly without consideration. The right of the government—the real owner of the land—to maintain in a court of equity a suit to set aside such conveyances and re-establish its title, in order that it may hold the land unclouded, or convey it to one entitled thereto, cannot be doubted. United States vs. Hughes, 11 Howard, 568, 4 Wall. 232; Curtner vs. United States, 149 U. S. 672, 673; United States vs. Bell etc. Company, 128 U. S. 362, 368. Whether the right should be exercised, and, if so, under and subject to what conditions, was a matter within the control of Congress. United States vs. Winona and St. Paul Railroad Company, 165 U. S. 463. By its acts of March 3, 1887, February 12, 1896, and March 2, 1896, Congress did provide for the assertion of that right, subject to certain specific provisions respecting

the confirmation of sales made by the railroad company to bona fide purchasers, and with the provisions already made to appear concerning the amounts of money that should be exacted by the government from the company or such of the lands as it might have sold and conveyed, or contracted to convey, to bona fide purchasers. The evidence shows that, as a mater of fact, all of the lands involved in the suit were either sold or contracted to be sold by the defendant railroad company to bona fide purchasers at prices exceeding the government price therefor. But the bill alleged that only a part of the lands therein described and of which the complainant was alleged to be the owner, had been sold or contracted to be sold by the railroad company to bona fide purchasers, and it sought discovery and an adjudication by the court as to whether any of the other tracts forming the subject of the suit had been so sold to a bona fide purchaser or purchasers, and, if so, which of them. The answers of all of the defendants denied any interest in the complainant and expressly alleged that each and every of the tracts of land in question was, prior to the commencement of the suit, granted by the complainant to the defendant railroad company. The case presented by the pleadings was therefore very clearly one within the equity jurisdiction of the court, calling for a decree quieting the disputes in respect to the title to the various tracts of land and involving an inquiry into the question of bona fides in those instances where conveyances of any of the tracts, or contracts therefor, had been made by the defendant railroad company. The point made on behalf of the de-

fendant railroad company, to the effect that the complainant's cause of action is purely and only an indivisible common-law demand for the value of so many acres of land, could not, therefore, be sustained, even if it had been made before the answer to the merits, and had been properly pleaded, neither of which was done. In Kilbourn vs. Sunderland, 130 U. S. 505, 514, the court said: "The point is also pressed that the remedy at law was plain, adequate and complete, and jurisdiction in equity therefore wanting. * * * The defendants fully answered the bill and raised no such objection, and, the cause being at issue, and evidence taken, it was ordered on the 23d of February, 1883, by consent, to be heard by the general term in the first instance. On the 24th of March, 1884, the defendant moved to dismiss on the ground of the adequacy of the remedy at law. We have had occasion recently to remark that where it is competent for the court to grant the relief sought, and it has jurisdiction of the subject matter, this objection should be taken at the earliest opportunity and before the defendants enter upon a full defense." See, also, Brown vs. Lake Superior County, 134 U. S. 530, 535; Perego vs. Dodge, 163 U. S. 160, 164; Williams vs. Monroe, 101 Fed. Rep. 322, 329.

Moreover, by sections 2 and 3 of the act of March 3, 1896, express provision was made by Congress not only for suit by the United States to test the bona fides of persons claiming to be bona fide purchasers of any lands erroneously patented or certified under land grants in aid of the construction of railroads, and for confirmation by decree of the court of such bona fide

sales, but it was also there expressly declared that any bona fide purchaser of lands erroneously patented or certified to such railroad company, who is not made a party to such suit on the part of the government, and who has not submitted his claim to the secretary of the interior, is authorized to "establish his right as such bona fide purchaser in any United States court having jurisdiction of the subject matter, or, at his option, as prescribed in sections three and four of chapter three hundred and seventy-six of the acts of the second session of the forty-ninth Congress"; so that, upon the facts appearing in the present case, very many such suits might have been brought against the United States to establish the rights of the bona fide purchasers of the lands here involved, but for the fact that they are all covered by the present suit, which is another reason why this suit was properly brought; for the avoidance of a multiplicity of actions is a common ground for the exercise of the jurisdiction of a court of equity. Story's Equity Pleading, secs. 284, 285, 286; Pomeroy's Equity Jurisprudence, secs. 256, 269; Smyth vs. Ames, 169 U. S. 466; Ogden vs. Armstrong, 168 U. S. 224; Brown vs. Guarantee Trust Company, 128 U. S. 403, 410; Bailey vs. Tillinghast, 99 Fed. Rep. 801. The equitable jurisdiction of the court having been properly invoked, and having attached, the Court will, on well settled principles, proceed to the final decision of the entire case. United States vs. Union Pacific Railroad, 160 U. S. 52; Walla Walla vs. Walla Walla Water Company, 172 U. S. 12; Hopkins vs. Grimshaw, 165 U. S. 342, 358; Williams vs. Monroe, 101 Fed. Rep. 322, 329.

The defendant railroad company is the grantor of all of the other defendants, and in its answer set up the title claimed by it to the lands in question under the congressional grants, and alleged and proved that by virtue of those grants the officers of the government issued to it patents for all of the lands, all of which it either deeded or contracted to convey to bona fide purchasers, among whom are all of its co-defendants, who may, in view of the alleged and agreed fact that such purchasers are very numerous, and of the showing that all of them occupy a precisely similar position, be properly held to represent the class. Equity Rule No. 48; Story's Equity Pleading, secs. 95, 97, 127; Davis vs. Gray, 16 Wall. 203, 232, 233. As the proof shows that all of the lands in suit were prior to its commencement either sold or conveyed, or contracted to be conveyed by the defendant railroad company to bona fide purchasers, it is obvious that the complainant is not entitled to have any of the patents in question canceled, because of that provision of the act of Congress of March 2, 1896, declaring that "no patent to any lands held by a bona fide purchaser shall be vacated or annulled, but the right and title of such purchaser is hereby confirmed." The preceding act of March 3, 1887, supplemented by that of February 12, 1896, contemplated the annulment of patents erroneously issued to land grant railroad companies, even where the lands for which such patents were issued had been sold by such companies to bona fide purchasers, having the requisite citizenship; in which latter event the issuance of patents directly to such purchasers, upon a compli-

ance with the provisions of the act, was authorized and directed. But the subsequent act of March 2, 1896, provided otherwise, expressly declaring, as has been shown that "no patent to any lands held by a bona fide purchaser shall be vacated or anulled," and in terms confirming the right and title of all such purchasers. There is nothing in the language of either act looking to a confirmation of any title in the land grant companies to any public land erroneously patented to them; such confirmation being, to the extent to which it is given, to bona fide purchasers from the companies. And in neither act is there any intention manifested on the part of Congress to donate any of the lands so erroneously certified or patented to either of the land grant companies, or to any bona fide purchaser thereof. On the contrary, the provision is that where such bona fide purchasers have paid to the company for the land an amount at least equal to the government price for similar land, then suit shall be brought on the part of the government against such company to recover the government price of the land; and in cases where such bona fide purchasers have paid to the company less than the government price for similar land such purchasers shall pay the government therefor a sum equal to the difference between the portion of the purchase price paid by them to the company and the government price for similar land, and suit be brought by the government against the grantee company for the balance, that is to say, for the amount received by the company from the bona fide purchasers.

On behalf of the defendant railroad company it is said

that "Congress exhausted its constitutional power when it confirmed the titles of the purchasers. It could not, by its fiat, make the defendant a debtor by retrospective act." The answer is that the company, having sold and disposed of the government's property without right, was, regardless of the statute, liable to the government, if not for its true value, certainly for the amount of money received by the company therefor and which it had no right to retain; for, having received the land illegally and disposed of it for money, there was an implied contract on the part of the company to pay over the money so received to its true owner. Pullman Car Company vs. Transportation Company, 171 U. S. 138, and cases there cited. There was no attempt on the part of congress to add to the company's legal or equitable liability, but surely it could waive the whole or any part of the right of the United States without any valid objection on the part of the company. And by the legislation under consideration Congress did waive a part of the government's right in the present case; for it appears that all of the lands in suit that were conveyed by the company were sold by it for sums in excess of the government price for such lands, and in those instances in which there were only contracts for deeds on the part of the defendant railroad company, with part payment only of the agreed price therefor, the suit authorized, and brought, is only for the latter amount in the latter instances, and for the minimum government price in the other.

It is perfectly plain that the acts of March 3, 1887,

February 12, 1896, and March 2, 1896, were remedial in their nature, and it has been heretofore so adjudged by this court in the course of the litigation between the United States and the defendant railroad company. It is equally clear that the legislation resulted in benefit to that company. That fact in part appears from its answer in the present suit, where it is shown that the lands in question which were erroneously patented were sold by it at prices largely in excess of the government price for such lands; and it is further shown by its supplemental answer in case No. 600, already referred to and in evidence in the present suit, wherein it was alleged that these same lands, which were, on motion of the government in that case, dismissed therefrom without prejudice, were sold by the company to bona fide purchasers, whose title thereto was confirmed by the act of Congress of March 2, 1896, and which act the company there pleaded in bar of the government's suit. Taking the benefits of the act, the company must, upon obvious principles of fairness, accept its burdens.

It is contended on the part of the defendant railroad company that the complainant is precluded from recovering from it anything for the lands in suit by reason of the decision of the Supreme Court in the case of United States v. Winona, etc. Railroad, 165 U. S. 463. This contention is based upon this language of the Court in concluding its opinion in that case: "If it be suggested that under the scope of these acts, though the suit must fail so far as it is one to set aside and cancel the certification, it may yet be maintained against the

defendant railroad company for the value of the lands so erroneously certified, and that the decree should be modified to this extent, it is sufficient to say that, first, the government has not asked any such decree; second, that it may be doubted whether for the mere purpose of recovering money an action at law must not be the remedy pursued; but lastly, and chiefly, that it does not appear from this record either that the railroad company received an excess of lands, or has even received (these lands included) the full quantity of lands promised in the grant; and further, that it does not appear that there were not within the granted or indemnity limits lands which the company might have rightfully received but for this erroneous certification. It will hardly be contended that, if, simply through a mistake of the land department, these lands were certified when at the time other lands were open to certification which could rightfully have been certified and which have since been disposed of by the government to other parties, so that there is now no way of filling the grant, the government can nevertheless recover the value of the lands so erroneously certified. In other words, the mistake of the officers of the government cannot be both potent to prevent the railroad company obtaining its full quota of lands, and at the same time potent to enable the government to recover from the company the value of lands erroneously certified."

It is to be observed, in the first place, that in the case just referred to the government did not seek to recover the value of any land, and therefore no such question

as is here presented was involved in that case, as was expressly stated by the court. But the case itself was wholly unlike the present one, for as the defendant railroad company's grant did not, according to the decisions above cited, embrace the lands in suit, none of them could form the basis of any indemnity selection. To which may be added the fact, that the parties to the present suit "stipulated and agreed * * * that odd sections of land, exceeding twenty thousand acres in quantity, are to be found within the indemnity limits of each of the grants made to the Southern Pacific Railroad Company by the acts of July 27, 1866, and March 3, 1871, which are subject to selection but have not been selected by said company."

It results, I think, that the complainant is entitled to judgment against the defendant railroad company, at the minimum government price, for all of those portions of the lands in suit for which it has been paid so much by bona fide purchasers, and for those portions thereof for which it has been paid less than such government price, the full amount so paid; and that such of the bona fide purchasers as have paid to the defendant railroad company the full government price of such lands are entitled to a confirmation of the lands so purchased and paid for, and those of such purchasers as have paid to the company for the lands purchased by them, respectively, less than the government price thereof, are entitled to like confirmation, upon paying to the complainant the difference between the amount paid by them to

the defendant railroad company and such minimum government price.

The counsel of the respective parties who are familiar with the details of these numerous purchases, can, no no doubt, agree upon a decree that meets the views of the court above indicated; and a decree in accordance therewith will be entered. Otherwise, I shall have to go through the evidence in respect to the various sales, in order to enter the proper decree.

ROSS,
Circuit Judge.

[Endorsed]: No. 878. U. S. Circuit Court, Ninth Circuit, Southern District of California. The United States, Complainants, vs. The Sounthern Pacific Railroad Company et al., Defendants. Opinion. Filed July 9, 1902. Wm. M. Van Dyke, Clerk.

Circuit Court of the United States, Ninth Circuit, Southern District of California.

UNITED STATES, Plaintiff,	}	
vs.	}	No. 878.
SOUTHERN PACIFIC RAILRO. COMANY et al., Defendants.	}	

Petition for Appeal.

The above defendants, Southern Pacific Railroad Company, Homer S. King, as Trustee, and Central Trust

Company of New York, as Trustee, conceiving themselves aggrieved by the decree made and entered herein on December 15th, 1902, appeal from the said decree to the United States Circuit Court of Appeals for the Ninth Circuit, for the reasons specified in their assignment of errors filed herewith; and they pray that their appeal may be allowed and that a true copy of the record, opinion of the Court, assignment of errors and all proceedings in the cause, under seal of this Court and the hand of its clerk, be sent to the United States Circuit Court of Appeals for the Ninth Circuit, at San Francisco, California.

Your petitioners further pray that, upon giving a good and sufficient bond, to be approved by this Court, all proceedings in this cause, and upon the said decree, may be stayed pending their appeal.

Dated February 9th, 1903.

WM. SINGER, Jr.,
Attorney for said Defendants.

WM. F. HERRIN,
Counsel for said Defendants.

Order Allowing Appeal.

The foregoing claim of appeal, and prayer for supersedeas, are allowed and granted; the supersedeas to take effect upon the filing of a good and sufficient bond in the sum of thirty-six thousand three hundred and twenty-one and 82-100 dollars, conditioned that the appellants shall prosecute their appeal to effect, and answer

all damages and costs if they fail to make their appeal good.

It is further ordered that a true copy of the record, opinion of the Court, assignment of errors, and all proceedings in the cause, under the seal of this court and the hand of its clerk, be sent to the United States Circuit Court of Appeals for the Ninth Circuit, at San Francisco, California.

Los Angeles, February 9th, 1903.

OLIN WELLBORN,
Judge.

[Endorsed]: No. 878. U. S. Circuit Court, 9th Circuit, Southern Dist. of Cala. United States vs. S. P. R. R. Co. et al. Petition for Appeal and Order Allowing Appeal. Filed Feb. 9, 1903. Wm. M. Van Dyke, Clerk. Wm. Singer, Jr., N. E. corner Second and Mission Streets, San Francisco, Cal., Atty. for Defts.

Circuit Court of the United States, Ninth Circuit, Southern District of California.

UNITED STATES,
Plaintiff,
vs.
SOUTHERN PACIFIC RAILROAD COMPANY et al.,
Defendants.
No. 878.

Assignment of Errors.

The defendants, Southern Pacific Railroad Company, Homer S. King, as Trustee, and Central Trust Company

of New York, as trustee, in connection with their petition for appeal herein, say that the decree in the above-entitled cause, made and entered on December 15th, 1902, is erroneous and against their just rights, in the following particulars:

1.

The Court erred in holding that any person, or persons, named or mentioned in the decree who are not specifically named in the bill of complaint as defendants were too numerous to be made parties, or were of a class sufficiently represented by any defendant, or defendants; and herein

(a) The Court erred in finding or holding that any person, or persons, named in the decree who are not specifically named in the bill of complaint, are, or were, defendants in the case or made parties to the suit; and

(b) The Court erred in finding or holding that any person, or persons, not specifically named as defendants in the bill of complaint, were too numerous to be made parties; and

(a) The Court erred in finding or holding that any person, or persons, not named as defendants in the bill of complaint were of a class sufficiently, or at all, represented by any defendant, or defendants, who appeared or answered in said cause; and

(d) The Court erred in finding or holding that any person, or persons, made appearance in the case of the representative, or representatives, of a class, or otherwise, than as the sole representative of himself, herself,

or itself, in the individual capacity specified in the several and respective appearances filed.

II.

The Court erred in adjudging that the defendant Southern Pacific Railroad Company is indebted to the United States at the rate of one dollar and twenty-five cents per acre, or at any other rate, or at all, with interest at the rate of six, or any, per cent for all or any of the land found to have been sold to bona fide purchasers, and described in subdivision II of the decree; and herein

(a) The Court erred in adjudging that the defendant, Southern Pacific Railroad Company, is indebted to the United States at the rate of one dollar and twenty-five cents per acre, or at any other rate, or at all, with interest at the rate of six, or any, per cent, for any of the lands described in said subdivision II of the decree and therein decreed confirmed to bona fide purchasers who were not expressly named in the bill of complaint as parties to the suit; and

(b) The Court erred in adjudging that the defendant, Southern Pacific Railroad Company is indebted to the United States at the rate of one dollar and twenty-five cents per acre, or at any other rate, or at all, with interest at the rate of six, or any, per cent, for any of the lands described in said subdivision II and therein decreed confirmed to bona fide purchasers.

III.

The Court erred in adjudging that the defendant Southern Pacific Railroad Company is indebted to the United

States for the several, or any, sums of money received from any purchaser, or purchasers, named and referred to in Subdivision III of the said decree.

IV.

The Court erred in holding that the patents issued to the Southern Pacific Railroad Company for the lands described in Subdivision IV of the decree, were erroneously issued; and in not holding and adjudging that the said patents were duly and properly issued to the said company as conveyances of lands within the indemnity limits of the grant made to it by the act of Congress of July 27th, 1866, therein referred to.

V.

The Court erred in adjudging that the defendant Southern Pacific Railroad Company is indebted to the United States at the rate of one dollar and twenty-five cents per acre, or at any other rate, or at all, with interest at the rate of six, or any, per cent, for all or any of the lands found to have been sold to bona fide purchasers, and described in Subdivision IV of the decree; and herein

(a). The Court erred in holding that the defendant Southern Pacific Railroad Company is indebted to the United States at the rate of one dollar and twenty-five cents per acre, or at any other rate, or at all, with interest at six, or any, per cent, for any of the lands described in said Subdivision IV of the decree and therein decreed confirmed to bona fide purchasers who are not expressly named in the bill of complaint as parties to the suit; and

(b). The Court erred in adjudging that the defendant Southern Pacific Railroad Company is indebted to the United States at the rate of one dollar and twenty-five

cents per acre, or at any other rate, or at all, with interest at six, or any, per cent, for any of the lands described in said Subdivision IV and therein decreed confirmed to bona fide purchasers.

VI.

The Court erred in adjudging and decreeing that the United States have and recover of and from the defendant Southern Pacific Railroad Company the sum of thirty-three thousand, five hundred and ninety-six dollars and ninety-two cents, or any other sum, or at all, with interest at six, or any, per cent, or for costs of suit in any sum or sums; and herein

(a). The Court erred in finding and adjudging that the defendant Southern Pacific Railroad Company is indebted to the United States in the sum of thirty-three thousand, one hundred and ninety-two dollars and seventy-nine cents, or any other sum, or at all, for twenty-six thousand, five hundred and fifty-four and twenty-three hundredths acres of land, or any acres of land, erroneously, or otherwise, patented by the United States unto the said company and by it sold to bona fide purchasers from whom it has received in payment therefor a sum equal to or in excess of one dollar and twenty-five cents per acre; and

(b). The Court erred in finding and adjudging that the defendant Southern Pacific Railroad Company is indebted to the United States in the sum of four hundred and four dollars and thirteen cents, or any other sum, or at all, received by said company from any land sale, or land sales, made at less than one dollar and twenty-five cents per acre.

VII.

The Court erred in not adjudging and decreeing that these defendants go hence; with a judgment against complainant for their costs herein so unjustly sustained.

VIII.

Wherefore, these defendants, appellants, pray that the said decree be reversed in all respects and particulars herein assigned and specified as error; and that the said Circuit Court be directed to enter a decree accordingly.

WM. SINGER, Jr.,
Attorney for the said Defendants.

WM. F. HERRIN,
Counsel for the said Defendants.

[Endorsed]: No. 878. U. S. Circuit Court, 9th Circuit, Southern Dist. of Cala. United States, vs. S. P. R. R. Co., et al. Assignment of Errors. Filed Feb. 9, 1903. Wm. M. Van Dyke, Clerk. Wm. Singer, Jr., N. E. Corner Second and Mission Streets, San Francisco, Cal. Atty. for Defts.

Circuit Court of the United States, Ninth Circuit, Southern District of California.

UNITED STATES,

Plaintiff,

vs.

SOUTHERN PACIFIC RAILROAD COMPANY, et al.,

Defendants.

No. 878.

Bond on Appeal.

We, J. S. Slauson and W. D. Woolwine, both of the County of Los Angeles, State of California, are held and firmly bound to pay unto the United States of America, the sum of thirty-six thousand and three hundred and twenty-one 82-100 dollars, for the payment of which, well and truly to be made, we bind ourselves, and each of us, our heirs, executors, and administrators, jointly and severally, firmly by these presents.

The defendants, Southern Pacific Railroad Company, Homer S. King, as trustee, and Central Trust Company of New York, as trustee, have been allowed an appeal to the United States Circuit Court of Appeals for the Ninth Circuit, and a supersedeas from the decree entered in the above-entitled court and cause on December 15th, 1902; and the condition of this obligation is, that if the said defendants shall prosecute their said appeal to effect, and answer all damages and costs, if they fail to make their

appeal good, then this obligation shall be void, otherwise to remain in full force.

Dated, signed and sealed on February 9th, 1903.

J. S. SLAUSON. [Seal]

W. D. WOOLWINE. [Seal]

State of California,
County of Los Angeles. } ss.

J. S. Slauson and W. D. Woolwine, being duly sworn, each for himself, says: I am one of the sureties on the foregoing bond, and subscribed my name thereto.

I am a resident of and free holder within the County of Los Angeles, State of California, and am worth the sum of thirty-six thousand, three hundred and twenty-one 82/100 dollars, over and above all my just debts and liabilities, in property within the said county which is not exempt from execution.

J. S. SLAUSON.

W. D. WOOLWINE.

Subscribed and sworn to before me on February 9th, 1903.

[Notarial Seal] NATHAN P. BUNDY,

Notary Public in and for the County of Los Angeles, State of California.

The foregoing bond is approved.

OLIN WELBORN,

Judge.

[Endorsed]: No. 878. U. S. Circuit Court, 9th Circuit, Southern Dist. of Cala. United States, vs. S. P. R. R. Co., et al. Bond on Appeal. Filed Feb. 9, 1903. Wm. M. Van Dyke, Clerk. Wm. Singer, Jr., N. E. Corner Second and Mission Streets, San Francisco, Cal., Atty. for Defts.

In the Circuit Court of the United States of America, of the Ninth Judicial Circuit, in and for the Southern District of California.

UNITED STATES, Complainants,

vs.

SOUTHERN PACIFIC RAILROAD COMPANY, et al., Defendants. } No. 878.

Clerk's Certificate to Transcript.

I, Wm. M. Van Dyke, Clerk of the Circuit Court of the United States of America, of the Ninth Judicial Circuit; in and for the Southern District of California, do hereby certify the foregoing seven hundred and twenty-five (725) typewritten pages, numbered from 1 to 725 inclusive, and comprised in two (2) volumes, numbered respectively volumes 1 and 2, including diagrams, maps and plats (excepting therefrom the orders of the commissioner of the general land office of withdrawal upon the map of definite location of the Southern Pacific Railroad so-called main line, being Exhibits 302 to 310, inclusive,

in the cause of United States vs. Southern Pacific Railroad Company, number 600, which original exhibits were by the order of this court, on the 9th day of December, 1898, delivered to the clerk of the United States Circuit Court of Appeals for the Ninth Circuit, with the transcript of the record on appeal in said cause, number 600, to be returned to the files of said cause in this court, upon the determination of the appeal therein, and which said original exhibits have not yet been returned to the files of this court), to be a full, true and correct copy of the record, pleadings, papers, opinion of the court, assignment of errors, and of all proceedings in the above and therein entitled cause, and that the same together constitutes the transcript of the record on appeal to the United States Circuit Court of Appeals for the Ninth Circuit, in said cause.

I do further certify that the cost of the foregoing record is $467 60/100, the amount whereof is to be paid me by the Southern Pacific Railroad Company, one of the appellants in said cause.

In testimony whereof, I have hereunto set my hand and affixed the seal of the said Circuit Court of the United States of America, of the Ninth Judicial Circuit, in and for the Southern District of California, this 20th day of April, in the year of our Lord, one thousand, nine hundred and three, and of the Independence of the United States, the one hundred and twenty-seventh.

[Seal] WM. M. VAN DYKE,

Clerk of the Circuit Court of the United States of America, of the Ninth Judicial Circuit, in and for the Southern District of California.

[Endorsed]: No. 956. In the United States Circuit Court of Appeals for the Ninth Circuit Southern Pacific Railroad Company et al., Appellants, vs. United States, Appellee. Transcript of Record. Upon Appeal from the United States Circuit Court for the Southern District of California.

Filed April 29, 1903.

F. D. MONCKTON,
Clerk.

United States Circuit Court of Appeals for the Ninth Circuit.

THE SOUTHERN PACIFIC RAILROAD COMPANY et al.,
Appellants,
vs.
THE UNITED STATES OF AMERICA,
Appellees.
No. 956.

Certificate of Clerk U. S. Circuit Court of Appeals to Transcript.

I, Frank D. Monckton, Clerk of the United States Circuit Court of Appeals for the Ninth Circuit, do hereby certify the foregoing seven hundred and seventy-eight (778) pages, numbered from one (1) to seven hundred and seventy-eight (778), inclusive, including the index and covers thereto, and contained in the preceding three (3) volumes, marked respectively, Volume I, II and III, to be a true copy of the printed transcript of record upon appeal from the United States Circuit Court for the Southern District of California, in the above-entitled case, and that the same was printed under my supervision pursuant to the provisions of rule 23 of the

rules of practice of the said the United States Circuit Court of Appeals, for the Ninth Circuit.

Attest my hand and the seal of the said the United States Circuit Court of Appeals, for the Ninth Circuit, at San Francisco, California, this 30th day of November, A. D. 1904.

[Seal] F. D. MONCKTON,
Clerk.

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PROCEEDINGS

HAD IN THE

UNITED STATES CIRCUIT COURT OF APPEALS

FOR THE NINTH CIRCUIT.

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At a stated term, to wit, the October term, A. D. 1903, of the United States Circuit Court of Appeals for the Ninth Circuit, held at the Courtroom in the City and County of San Francisco, on Monday, the fifth day of October, in the year of our Lord one thousand nine hundred and three. Present: The Honorable WILLIAM B. GILBERT, Circuit Judge; Honorable WILLIAM W. MORROW, Circuit Judge; Honorable THOMAS P. HAWLEY, District Judge.

THE SOUTHERN PACIFIC RAILROAD COMPANY, et al.,
Appellants,
vs.
THE UNITED STATES OF AMERICA,
Appellee.
No. 956.

Order of Submission.

By stipulation of counsel for the respective parties, ordered, appeal submitted to the Court for consideration and decision on briefs pursuant to the terms of the said stipulation—the briefs to be filed as follows: Appellants' brief within thirty days from date; appellee's brief within thirty days thereafter; appellants' reply brief within twenty days thereafter; and appellee's reply brief within ten days thereafter.

At a stated term, to wit, the October term, A. D. 1903, of the United States Circuit Court of Appeals for the Ninth Circuit, held at the Courtroom in the City and County of San Francisco, on Tuesday, the first day of March, in the year of our Lord one thousand nine hundred and four. Present: The Honorable WILLIAM B. GILBERT, Circuit Judge; Honorable ERSKINE M. ROSS, Circuit Judge; Honorable THOMAS P. HAWLEY, District Judge.

THE SOUTHERN PACIFIC RAILROAD COMPANY, et al.,
Appellants,
vs.
THE UNITED STATES OF AMERICA,
Appellee.
No. 956.

Order of Submission. (No. 2:)

Upon motion made on behalf of William Singer, Jr., Esquire, counsel for the appellants, ordered, order of submission heretofore entered vacated in so far as an allowance of sixty days to counsel for the appellants to file a reply brief is allowed, and that the appeal now stand submitted to the Court for consideration and decision upon the briefs now on file.

In the United States Circuit Court of Appeals, for the Ninth Circuit.

SOUTHERN PACIFIC RAILROAD COMPANY, et al.,
Appellants,
vs.
UNITED STATES,
Appellee.
No. 956.

Opinion U. S. Circuit Court of Appeals.

Appeal from the Circuit Court of the United States for the Southern District of California.

This is a bill in equity brought by the United States against the Southern Pacific Railroad Company and the trustees in certain mortgages, to secure bonds issued by said company, and against numerous other defendants, to determine the title to over thirty thousand acres of land situate within the limits of the grant to the Southern Pacific Railroad by the act of March 3, 1871, which were excepted from such grant by reason of a prior grant to, and reservation for, the Atlantic and Pacific Railroad Company by the act of July 27, 1866; to ascertain and determine what portion of the lands have been sold by the Southern Pacific Company to bona fide purchasers; to obtain a confirmation of the title to such lands as are in the hands of bona fide purchasers; for the cancellation of patents of such lands as are still owned by the company, and for an accounting for the moneys received

by the Southern Pacific Railroad Company for such lands as it has sold to bona fide purchasers to the extent of $1.25 per acre, in accordance with the provisions of the acts of Congress of March 3, 1887, and March 2, 1896.

The averments in the bill are quite lengthy. A synopsis thereof is contained in the decision of the Circuit Court, to which reference is here made. (United States vs. Southern Pacific Railroad Co., 117 Fed. 544-550.)

The final decree entered by the Court, from which the appeal herein is taken, is divided into eight subdivisions.

In subdivision 2, "The Court finds and determines that all the lands described in this subdivision, are within the limits of the grant made unto the Atlantic and Pacific Railroad Company by act of Congress approved on July 27th, 1866, as established by the map of definite location filed by that company in the general land office during the year 1872—which grant was forfeited unto the United States by act of Congress approved on July 6th, 1886; that none of the said lands are situated within the limits, primary or indemnity, of the grant made unto the Southern Pacific Railroad Company by section 18 of the said act of Congress of July 27th, 1866; that in former litigations between the United States and the said Southern Pacific Railroad Company, it was finally and conclusively adjudged and determined, as between the United States and any claim to said lands by said company, by virtue of the act of Congress of March 3d, 1871, that such lands became, upon the passage of the forfeiture act of July 6th, 1886, the property of the United States, and by force of that act were restored to the public domain, without

the Southern Pacific Railroad Company having acquired any interest therein, that affected the power of the United States to forfeit and restore them to the public domain; that all of the said lands have been erroneously patented by the United States unto the said Southern Pacific Railroad Company; that the said Southern Pacific Railroad Company sold all of the said lands to bona fide purchasers thereof, at purchase prices paid, in each instance, equal to or in excess of $1.25 per acre; that the title of each of such purchasers, to the lands of their respective purchasers, as set forth in the several items of this subdivision (148 in number), was confirmed unto such purchasers by acts of Congress approved on March 3d, 1887, and March 2d, 1896, and that the defendant Southern Pacific Railroad Company is indebted to the United States for all of the said land so sold at the rate of one dollar and twenty-five cents per acre, with interest at six per cent per annum from and after the date of this decree."

It then separately adjudges and decrees a confirmation of the title of the purchasers coming under this subdivision.

In subdivision 3 the lands are all situated the same as in subdivision 2, and were sold to bona fide purchasers thereof, at the prices set forth in the several items of this subdivision (5 in number), "each of such sales being for a price less than one dollar and twenty-five cents per acre; and that the defendant Southern Pacific Railroad Company is indebted to the United States for the several sums of money received from the said purchasers, as in

the items of this subdivision set forth." And then enters a separate decree confirming the title to such purchasers upon payment by them to the United States of a specified sum of money, being the difference between the amount paid to the railroad company and one dollar and twenty-five cents per acre.

Subdivision 5 finds and determines the facts with reference to certain lands which are situated within the indemnity limits of the grant to the Atlantic and Pacific Railroad Company of July 27th, 1866; "that the lands in the conflicting limits of the grant to the Atlantic and Pacific Railroad Company and to the Southern Pacific Railroad Company, made by the act of Congress of July 27th, 1866, are in process of being partitioned and said grants are in process of adjustment and settlement in the Department of the Interior. (183 U. S. 519, 534, 535.)"

In this subdivision, it is "ordered, adjudged and decreed, that the bill of complaint for the said lands and for the value thereof, be and hereby is dismissed without prejudice to any further suit or action against the defendant Southern Pacific Railroad Company, D. O. Mills and Homer S. King, as trustees, and Central Trust Company, as trustee," to certain fractional sections thereof, and confirms the title to certain other parties therein named.

In subdivision 6 "the Court finds and determines that the following described lands are covered by patents issued by the United States otherwise than under or by virtue of any land grant made unto the Southern Pacific

Railroad Company—and as to such lands it is ordered, adjudged and decreed that the bill of complainant herein is hereby dismissed without prejudice," and specifies the sections, or fractional sections, of land coming under this head.

In subdivision 7, "It is further ordered, adjudged and decreed that the defendants, Southern Pacific Railroad Company, Homer S. King, as trustee, and Central Trust Company, as trustee, have no title, estate or interest" in certain lands therein mentioned.

In subdivision 8, "The Court finds and determines that the defendant, Southern Pacific Railroad Company is indebted to the United States in the sum of thirty-three thousand one hundred and ninety-two dollars and seventy-nine cents ($33,192.79), for twenty-six thousand five hundred and fifty-four and twenty-three hundredths (26,554.23) acres of land at one dollar and twenty-five cents ($1.25), per acre, erroneously patented by the United States unto the said company, and by it sold to bona fide purchasers from whom it has received in payment therefor, in each instance, a sum equal to or in excess of one dollar and twenty-five cents ($1.25) per acre; together with the sum of four hundred and four dollars and thirteen cents ($404.13), received by the said company from the land sales made at less than one dollar and twenty-five cents ($1.25), per acre, set forth in subdivisions III and IV hereof; in all the sum of thirty-three thousand five hundred and ninety-six dollars and ninety-two cents ($33,596.92);" and entered a decree for the recovery of said sum.

The several acts of Congress referred to in the bill of complaint and mentioned in the decree in relation to the lands granted to appellant, the forfeiture thereof and the rights of the government therein, form a material and necessary part of the history of the facts leading up to the present case. It is deemed unnecessary to repeat these facts. The questions in relation thereto have all been settled and determined by the courts. A reference to some of the decisions is all that need be given to complete the history as to such facts.

See United States vs. Southern Pacific Railroad Co., 86 Fed. 962; Id., 98 Fed. 27, 45; Id., 146 U. S. 570; Id., 168 U. S. 1; Id., 183 U. S. 519; Id., 189 U. S. 447.

WM. SINGER, Jr., for Appellants.

WM. F. HERRIN, of Counsel.

JOSEPH H. CALL, Special U. S. Attorney, for Appellee.

Before GILBERT and MORROW, Circuit Judges, and HAWLEY, District Judge.

HAWLEY, District Judge (After making the foregoing statement).—The points of contention specified by appellant in its brief, are three:

"(1) The case proved shows no ground of equity jurisdiction.

(2) The case proved shows no cause of action at law; and, herein, the Court erred in rendering any judgment for money, in favor of complainant.

(3) The splitting of demands by voluntary dismissal of part thereof from suit No. 600, is a bar to this suit; and all other issues here are res judicata by decrees in the other former suits set forth in the bill of complaint."

The broad contention of the appellant is, that the suit is simply an action at law to recover money for the lands sold by appellant; that "the amount is only a question of arithmetic" to be ascertained by multiplying the number of acres sold at so much per acre; that the suit is, in substance an action of debt or assumpsit for money had and received, in the form of a suit in equity; that the averments in the bill as to determining who are bona fide purhasers, the quieting of titles, and annulling of patents are simply suggested in order to give color of right to sue in equity; that as to the lands sold by the railroad company to bona fide purchasers "there were no titles to confirm nor patents to annul," and as no grounds for equitable relief are stated in the bill of complaint, it should be dismissed.

The grounds upon which this contention is sought to be maintained are varied and extensive, and require a careful and painstaking examination of the statutes mentioned in the bill and decree, and of numerous authorities cited by the respective counsel.

Appellant filed its answer to the merits of the bill, without any demurrer, plea or other objection, to the jurisdiction in equity. The government was, therefore, put to the expense of taking the testimony, and the cause was submitted to the court and tried upon its merits. The first objection to the jurisdiction of the Court

upon this ground was made in the argument of counsel for appellant at the hearing. It is claimed by appellee, upon these facts, that appellant waived any right to object to the final determination of this cause as one in equity, the Court having power to grant the relief sought by the bill, and the court below so held.

Upon this point counsel for appellant claims that the court erred; that the true rule is that where the plaintiff, upon the face of his bill, shows he has a plain, adequate and complete remedy at law, and no other equitable relief is prayed for, it is not necessary that an objection to the jurisdiction in equity should be taken in limine in the answer; that it need not be made by demurrer or plea; that if taken at the hearing it is sufficient; and if it clearly exists, it is the duty of the court sua sponte to recognize it and give it effect.

The following authorities, among others, are cited in support of this rule:

Mills vs. Knapp, 39 Fed. 592.

Hoey vs. Coleman, 46 Fed. 221.

Oelrichs vs. Spain, 15 Wall. 208, 227.

Lewis vs. Cocks, 23 Wall. 466.

Killian vs. Ebbinghaus, 110 U. S. 573.

Litchfield vs. Ballou, 114 U. S. 192.

Jones vs. Bradshaw, 16 Gratt. 361.

Green vs. Massie, 21 Gratt. 362.

Buffalo vs. Town etc., 85 Va. 222.

The principle, as applied to the particular facts in these cases, may, for the purposes of this opinion, be ad-

mitted to be true. We have had frequent occasion, notably in German Savings and Loan Society vs. Dormitzer, 116 Fed. 471-2, and Utah-Nevada Company vs. De Lamar, recently decided, to call attention to the fact that the language as used by the Courts in their opinions, must be read and construed in connection with the facts of the case about which the Court is speaking.

Most of the cases relied upon by appellant did not present a case where it was competent for a court of equity to grant the relief asked for, while in the case at bar the averments in the bill clearly show that it is competent for a court of equity to grant the relief asked for. This distinction must not be overlooked by the courts. In the latter line of cases it is held that failure to object to the jurisdiction in equity must be taken by plea, demurrer, or answer at the earliest opportunity, and if not so made it will be considered as having been waived.

In Kilbourn vs. Sunderland, 130 U. S. 505, 514, the Court said: "The point is also pressed that the remedy at law was plain, adequate and complete, and jurisdiction in equity therefore wanting. * * * The defendants fully answered the bill and raised no such objection, and the cause being at issue, and evidence taken, it was ordered on the 23d of February, 1883, by consent to be heard by the general term in the first instance. On the 24th of March, 1884, the defendant moved to dismiss on the ground of the adequacy of the remedy at law. We have had occasion recently to remark that where it is competent for the Court to grant the relief sought,

and it has jurisdiction of the subject matter, this objection should be taken at the earliest opportunity and before the defendants enter upon a full defense. Reynes vs. Dumont, ante, 354."

In Brown vs. Lake Superior Iron Co., 134 U. S. 530, 535, the Court said: "Good faith and early assertion of rights are as essential on the part of the defendant as of the complainant. This matter has recently been before this Court, in Reynes vs. Dumont, 130 U. S. 354, 395, and was carefully considered, and the rule, with its limitations, thus stated: 'The rule as stated in 1 Daniell's Chancery Practice, 555, 4th Am. ed., is that if the objection of want of jurisdiction in equity is not taken in proper time namely, before the defendant enters into his defense at large, the Court, having the general jurisdiction, will exercise it; and in a note on page 550, many cases are cited to establish that 'if a defendant in a suit in equity answers and submits to the jurisdiction of the Court, it is too late for him to object that the plaintiff has a plain and adequate remedy at law. This objection should be taken at the earliest opportunity. The above rule must be taken with the qualification that it is competent for the Court to grant the relief sought, and that it has jurisdiction of the subject matter.' "

See, also, Insley vs. United States, 150 U. S. 512, 515.
Perego vs. Dodge, 163 U. S. 160, 164.
Williamson vs. Monroe, 101 Fed. 322, 329.

This conclusion, of itself, is a sufficient answer to appellant's contention that the complainant's cause of action is simply an individual common-law demand for the

value of so many acres of land. But if appellant could now raise the question, it could not, in our opinion, be sustained.

The jurisdiction in equity attaches unless the legal remedy, both in respect to the final relief and the mode of obtaining it, is as efficient as the remedy which equity would confer under the same circumstances. The circumstances of each case must determine the application of the rule.

In Boyce vs. Grundy, 28 U. S. (3 Pet.) 209, 215, the Court said: "It is not enough that there is a remedy at law; it must be plain and adequate, or, in other words, as practical and efficient to the ends of justice and its prompt administration, as the remedy in equity."

In Oelrichs vs. Spain, supra, relied upon by appellant, the Court said: "The 16th section of the Judiciary Act of 1789 provides, 'that suits in equity shall not be sustained in any case where plain, adequate, and complete remedy can be had at law'; but this is merely declaratory of the pre-existing rule, and does not apply where the remedy is not 'plain, adequate, and complete'; or, in other words, 'where it is not as practical and efficient to the ends of justice and to its prompt administration, as the remedy in equity.' Where the remedy at law is of this character, the party seeking redress must pursue it. In such cases the adverse party has a constitutional right to a trial of the issues of fact by a jury. But this principle has no application to the case before us. Upon looking into the record it is clear to our minds, not only that the remedy at law would not be as effectual as the

remedy in equity, but we do not see that there is any effectual remedy at all at law. * * * The direct proceeding in equity will save time, expense, and a multiplicity of suits, and settle finally the rights of all concerned in one litigation."

Kilbourn vs. Sunderland, supra.

Joy vs. St. Louis, 138 U. S. 1, 49.

United States vs. Union Pacific Ry., 160 U. S. 1, 51.

Walla Walla vs. Walla Walla W. C., 172 U. S. 1, 12.

In carrying out these principles the Courts have held that where a court of equity is authorized to take jurisdiction over a cause for any purpose, it may retain the cause for all purposes within the scope of the equities to be enforced, and proceed to a final determination of all the matters at issue therein.

May vs. Le Claire, 11 Wall. 217, 236.

Ober vs. Gallagher, 93 U. S. 199.

Ward vs. Todd, 103 U. S. 327, 329.

Hopkins vs. Grimshaw, 165 U. S. 342, 358.

Smyth vs. Ames, 169 U. S. 466, 516.

Peck vs. Ayers & Lord Tie Co., 116 Fed. 273, 275.

Douglas Co. vs. Tennessee Lumber Mfg. Co., 118 Fed. 438.

1 Pomeroy's Eq. Jur., sec. 181.

Lynch vs. Railway Co., 129 N. Y. 274, 280.

Whitehead vs. Sweet, 126 Cal. 67, 75, 76.

That the bill upon its face presents sufficient averments of fact to authorize equitable interposition and relief, cannot be questioned. Appellant virtually con-

cedes this. But it argues that when probed to the bottom, it will be found that all the so-called grounds of equitable relief have been settled and disposed of either by the mutual agreements of the railroad company and the government, or by the express provisions of the act of Congress of March 2, 1896; and that the sole question really involved herein is simply a money demand on the part of the government against the railroad company; that the other parties named as defendants have no interest in the litigation, their rights having been previously settled, either by prior litigation or the acts of Congress; and hence that it legally follows that all the equitable allegations of the bill could not have been woven into the complaint for any other purpose than that of giving color of right to sue in equity, a proceeding, which it is claimed has not received the sanction of the Courts, and is wholly inadmissible.

The authorities cited and relied upon by appellant upon this branch of the case are substantially to the effect, that, as was stated by the Court in Buzard vs. Houston, 119 U. S. 347, 352, "In cases of fraud or mistake, as under any other head of chancery jurisdiction, a court of the United States will not sustain a bill in equity to obtain only a decree for the payment of money by way of damages, when the like amount can be recovered at law in an action sounding in tort or for money had and received. Parkersburg vs. Brown, 106 U. S. 487, 500; Ambler vs. Choteau, 107 U. S. 586; Litchfield vs. Ballou, 114 U. S. 190."

In that case the Court expressly recognized the rule which we have before stated, that a suit in equity to enforce a legal right can be brought when such court can give more complete and effectual relief in kind or degree on the equity side than on the common-law side.

In Parkersburg vs. Brown, supra, the bill, as filed, asked for equitable relief, and sought to charge the city as a trustee and to reach the property covered by the deed of trust. The relief granted by the decree was a simple money judgment against the city, for the interest due on the bonds at the date of the decree, based on the legal liability of the city to pay the bonds and coupons; and the Court said: "For this there was a plain, adequate, and complete remedy at law, in each bondholder, if the city was thus liable. So that the decree made could not be sustained in any event."

This character of cases has no special application to a case like the present.

In Ambler vs. Choteau, supra, the only point decided was to the effect that where the object of a suit in chancery is the recovery of the damages which the complainant alleges he has sustained by reason of an unlawful and fraudulent conspiracy to cheat him out of his interest in an original invention, which is the subject matter of the controversy, the bill should be dismissed, as his remedy is at law.

In Litchfield vs. Ballou, supra, it was held that a bill in chancery which sets forth facts that would support an action at law for money had and received, fails for want of equity jurisdiction.

In Scott vs. Neely, 140 U. S. 106, 110, the Court said: "All actions which seek to recover specific property, real or personal, with or without damages for its detention, or a money judgment for breach of a simple contract, or as damages for injury to person or property, are legal actions, and can be brought in the federal courts only on their law side."

These cases illustrate the grounds upon which appellant relies to sustain its contention. They, in our opinion, fall short of lending any aid or comfort in that direction. The facts in the cases are readily distinguishable from the case at bar.

It may be that the United States could have maintained an action at law for the amount of money found to be due from appellant on the familiar and well recognized principle announced in Gaines vs. Miller, 111 U. S. 395, 397, and other authorities cited by appellant, that whenever a person or corporation has received money to which in equity and good conscience another is entitled, the law creates a promise by the former to pay the latter, and the obligation may be enforced in assumpsit for money had and received, if that is the only question involved in the action.

The suit in hand is, however, of a different character. It is true that one of the objects of the suit was to obtain a judgment and decree against appellant for the amount of money claimed to be due the United States, but it also involved the necessity of ascertaining and establishing the rights of the bona fide purchasers of certain of the lands; the rights of other parties to whom

land had been sold by appellant to purchasers under executory contracts that had not been fully executed; and the rights of certain bondholders claiming an interest in some of the lands included in the grant to appellant. It did not appear upon the hearing that the averments in the bill of complaint concerning these matters were false, or did not exist, nor did the complainant obtain any relief by the decree which the Court was not authorized, upon the showing made, to grant.

We are of opinion that the government had the right to bring a suit which would settle all these matters, and prevent any further litigation upon any of the questions involved herein. The amount of money, if any, due from appellant could be ascertained by a full consideration of all these matters, and some of the questions raised and determined could not be reached and determined in a court of law. The same considerations which invoke the jurisdiction may control the remedy. A court of equity, with its flexible procedure and far-reaching powers, could alone furnish a full, complete and adequate remedy to which the government was entitled, by so molding and applying the remedy as to reach the ends of justice with reference to all the parties, and all the issues raised by the bill.

In 1 Story's Eq. Jur. (12 ed.), sec. 33, the author said: "Perhaps the most general, if not the most precise, description of a court of equity, in the English and American sense, is, that it has jurisdiction in cases of rights, recognized and protected by the municipal jurisprudence, where a plain, adequate, and complete remedy

cannot be had in the courts of common law. The remedy must be plain; for, if it be doubtful and obscure at law, equity will assert a jurisdiction. It must be adequate; for, if at law it falls short of what the party is entitled to, that founds a jurisdiction in equity. And it must be complete; that is, it must attain the full end and justice of the case. It must reach the whole mischief, and secure the whole right of the party in a perfect manner, at the present time, and in future; otherwise, equity will interfere and give such relief and aid as the exigency of the particular case may require. The jurisdiction of a court of equity is, therefore, sometimes concurrent with the jurisdiction of a court of law; it is sometimes exclusive of it; and it is sometimes auxiliary to it."

The act of Congress of March 2, 1896, limiting the time in which suits for the cancellation of patents may be brought, provides, that in certain specified cases no suits need be brought for the cancellation of patents, nor for the confirmation of the title held by bona fide purchasers.

In section 2 it is provided "That if any person claiming to be a bona fide purchaser of any lands erroneously patented or certified shall present his claim to the Secretary of the Interior prior to the institution of a suit to cancel a patent or certification, and if it shall appear that he is a bona fide purchaser, the Secretary of the Interior shall request that suit be brought in such case against the patentee, or the corporation, company, person, or association of persons for whose benefit the certification was made, for the value of said land,

which in no case shall be more than the minimum government price thereof, and the title of such claimant shall stand confirmed."

It then further provides that "An adverse decision by the Secretary of the Interior on the bona fides of such claimant shall not be conclusive of his rights, and if such claimant, or one claiming to be a bona fide purchaser, but who has not submitted his claim to the Secretary of the Interior, is made a party to such suit, and if found by the Court to be a bona fide purchaser, the Court shall decree a confirmation of the title, and shall render a decree in behalf of the United States against the patentee, corporation, company, person, or association of persons for whose benefit the certification was made for the value of the land as hereinbefore provided. Any bona fide purchaser of lands patented or certified to a railroad company, and who is not made a party to such suit, and who has not submitted his claim to the Secretary of the Interior, may establish his right as such bona fide purchaser in any United States court having jurisdiction of the subject matter."

Then in section 3, after specifying several conditions, it provides, "If it shall appear that such person or corporation is a bona fide purchaser as aforesaid, or that such persons or corporations are such bona fide purchasers, then no such suit shall be instituted and the title of such claimant or claimants shall stand confirmed; but the Secretary of the Interior shall request that suit be brought in such case against the patentee, or the corporation, company, person, or association of

persons for whose benefit the patent was issued or certification was made for the value of the land as hereinbefore specified."

The act of Congress did not create the debt due from the railroad company to the government; it did not "adjudge or decree that the corporation thereby became the debtor of the United States"; nor was the passage of the act "an attempt by retrospective statute to deprive citizens of property without due process of law." It was not a "usurpation of judicial power." The rail road company was not "condemned without a hearing to pay a debt."

The ingenious argument of appellant in relation to these matters is not supported by a full consideration and proper interpretation of the various provisions of the acts of March 3, 1887 (24 Stat. 556), February 12, 1896 (29 Stat. 6), and March 2, 1896 (29 Stat. 42).

All laws necessarily bear with them all the powers or incidents necessary to fully carry out their intention.

One of Domat's rules, referred to in Sedg. on Constr. of Stat. & Const. L. (2 ed.) 243, is, that "All laws, whether natural or arbitrary, are intended to produce results conformable to that general idea of justice in which they originate. Consequently, their application must be governed by the demands of this general spirit of justice; or in regard to natural laws by equity, and in regard to positive or arbitrary laws by the intention of the legislator. In this distinction and discrimination, the science of law mainly consists."

The obligation of the railroad company, or debt cre-

ated, arises from the facts set forth in the bill of complaint, and proven at the trial. The railroad company had received patents for lands under an erroneous interpretation of the law. It was a clear mistake, and conveyed no rights or title whatever to the railroad company to any of the lands in question.

The company sold a portion of the lands to bona fide purchasers, in many cases receiving more than the government price therefor. Not having any title to the lands, and having received the money for the lands it sold to bona fide purchasers, it must be held responsible to pay the amount specified in the act therefor.

As was aptly stated by Judge Ross in the court below, "the company, having sold and disposed of the government's property, without right, was, regardless of the statute, liable to the government, if not for its true value, certainly for the amount of money received by the company therefor, and which it had no right to retain; for, having received the land illegally, and disposed of it for money, there was an implied contract on the part of the company to pay over the money so received to its true owner."

Annexed to the bill of complaint are two exhibits: Exhibit "A" showing lands that were erroneously patented by the United States to the Southern Pacific Company prior to March 2, 1896, containing in the aggregate 30,062.79 acres (the record shows that a portion of these lands were sold by executory contracts, which remain unexecuted); Exhibit "B" showing so much of the lands embraced in Exhibit "A" as were erroneously pat-

ented by the United States to the Southern Pacific Company prior to March 2, 1896; and which, prior to said date, had been sold by said company to bona fide purchasers, containing in the aggregate 16,512.56 acres.

Most of the lands described in these exhibits are identical. Exhibit "A" is virtually a copy of exhibit "B," with here and there an additional tract.

The contention of appellant that "the splitting of demands by voluntary dismissal of part thereof from suit No. 600 is a bar to this suit," cannot be sustained.

With reference to this contention the bill of complaint avers, "That heretofore, on the 7th day of January, 1898, another suit was depending in this court brought by your orator against said Southern Pacific Railroad Company, and numbered 600, to vacate and annul patents to certain lands, including those lands described in exhibit 'B' annexed to this bill. That said Southern Pacific Railroad Company filed answer therein and alleged in substance and effect that the said tracts of land (exhibit 'B') had been, prior to March 2, 1896, sold by said railroad company to purchasers in good faith and for value, and which purchasers were bona fide purchasers of said lands within the meaning of the acts of Congress, in that behalf. * * * Your orator, relying upon the truth of such averments and of such testimony as to those lands described in said exhibit 'B,' dismissed from said case 600 the lands described in said exhibit 'B' without prejudice."

The bona fide purchasers who had bought their lands from the railroad company were not made parties to

that suit, and no adjudication could have been made therein as to the title of lands held by such bona fide purchasers. In the present suit the bona fide purchasers of the land are properly represented. An adjudication of their title and rights, and a recovery from the railroad company, is sought by the government for the price of the land which had been erroneously patented and sold.

It will thus be seen, not only that the parties to these suits are different, but the subject matter of the suits is also different. The relief sought and the issues raised are by no means identical; but a discussion of this point is wholly unnecessary because the other suit (No. 600) as to certain lands was dismissed without prejudice, and such a dismissal cannot be plead in bar (Hughes vs. United States, 4 Wall 232, 237; Bunker Hill & Sullivan M. Co. vs. Shoshone M. Co., 109 Fed. 504, 507, and authorities there cited); nor can it in any other manner affect the rights of the government in the present suit.

The decree of the Circuit Court is affirmed.

[Endorsed]: No. 956. In the United States Circuit Court of Appeals for the Ninth Circuit. Southern Pacific Railroad Company. et al., Appellants, vs. United States, Appellee. Opinion. Filed Oct. 19, 1904. F. D. Monckton, Clerk.

United States Circuit Court of Appeals, for the Ninth Circuit.

THE SOUTHERN PACIFIC RAILROAD COMPANY et al.,
Appellants,
vs.
THE UNITED STATES OF AMERICA,
Appellee.
No. 956.

Decree U. S. Circuit Court of Appeals.

Appeal from the Circuit Court of the United States for the Southern District of California.

This cause came on to be heard on the transcript of the record from the Circuit Court of the United States for the Southern District of California, and was argued by counsel.

On consideration whereof, it is now here ordered, adjudged and decreed by this Court, that the decree of the said Circuit Court in this cause be, and the same is hereby, affirmed.

[Endorsed]: Decree. Filed and Entered Oct. 19, 1904. F. D. Monckton, Clerk.

At a stated term to wit, the October term A. D. 1904, of the United States Circuit Court of Appeals for the Ninth Circuit, held at the Courtroom, in the City and County of San Francisco, on Monday, the thirty-first day of October, in the year of our Lord one thousand nine hundred and four. Present: The Honorable WILLIAM B. GILBERT, Circuit Judge; Honorable ERSKINE M. ROSS, Circuit Judge; Honorable THOMAS P. HAWLEY, District Judge.

THE SOUTHERN PACIFIC RAILROAD COMPANY et al.,
Appellants,
vs.
THE UNITED STATES OF AMERICA,
Appellee.
No. 956.

Order Allowing Appeal to Supreme Court of United States.

On motion of Mr. William Singer, Jr., attorney for the appellants in this cause, it is ordered that an appeal be, and hereby is allowed the said appellants to the Supreme Court of the United States from the decree of this Court filed and entered herein on October 19, 1904.

In the United States Circuit Court of Appeals, Ninth Circuit.

SOUTHERN PACIFIC RAILROAD COMPANY et al.,
Appellants,
vs.
THE UNITED STATES,
Appellee.
No. 956.

Petition for Appeal to Supreme Court.

The above-named appellants, conceiving themselves aggrieved by the decree made and entered herein on October 19th, 1904, appeal therefrom to the Supreme Court of the United States, for the reasons specified in their assignment of errors filed herewith; and they pray that their appeal may be allowed, and that a transcript of the record, proceedings and papers upon which the said decree was made, duly authenticated, may be sent to the Supreme Court of the United States.

Your petitioners pray that upon giving a good and sufficient bond to be approved by this Court, all proceedings in this cause, and upon the said decree, may be stayed pending their appeal.

WM. SINGER, Jr.,
Attorney for Appellants.

WM. F. HERRIN,
Counsel for Appellants.

Order Allowing Appeal and Supersedeas.

The foregoing claim of appeal and prayer for supersedeas are allowed and granted; the supersedeas to take effect upon the filing of a good and sufficient bond in the sum of two thousand dollars conditioned that the appellants shall prosecute their appeal to effect, and answer all damages and costs if they fail to make their appeal good.

It is further ordered that a transcript of the record, proceedings and papers upon which the said decree was made, under the seal of this Court and the hand of its clerk, to be sent to the Supreme Court of the United States.

San Francisco, November 3d, 1904.

WM. B. GILBERT,

Judge.

[Endorsed]: Original. No. 956. U. S. Circuit Court of Appeals, Ninth Circuit. Southern Pacific Railroad Co. et al. vs. The United States. Petition and Order for Appeal. Filed November 3, 1904. F. D. Monckton, Clerk. Wm. Singer, Jr., No. 49 Second St., San Francisco, Cal., Atty. for Appellants.

In the United States Circuit Court of Appeals, Ninth Circuit.

SOUTHERN PACIFIC RAILROAD COMPANY et al.,
Appellants,
vs.
THE UNITED STATES,
Appellee.
No. 956.

Assignment of Errors.

The appellants, Southern Pacific Railroad Company, Homer S. King as trustee, and Central Trust Company of New York as trustee, in connection with their petition for appeal herein, say that the decree of this Court in the above-entitled cause, made and entered on October 19th, 1904, is erroneous and against their just rights in the following particulars; that is to say:

I.

The Court erred in finding, or determining (by affirming the decree of the Circuit Court), that any person, or persons, named or mentioned in the decree who were not specifically named in the bill of complaint as defendants, were too numerous to be made parties, or were of a class sufficiently represented by any defendant or defendants; and herein

(a). The Court erred in so finding or holding that any person, or persons, named in the Circuit Court decree who are not specifically named in the bill of complaint

are, or were, defendants in the case or made parties to the suit; and

(b). The Court erred in so finding or holding that any person, or persons, not specifically named as defendants in the bill of complaint, were too numerous to be made parties; and

(c). The Court erred in so finding or holding that any person, or persons, not named as defendants in the bill of complaint were of a class sufficiently, or at all, represented by any defendant, or defendants, who appeared or answered in said cause; and

(d). The Court erred in so finding or holding that any person, or persons, made appearances in the case as the representative, or representatives, of a class, or otherwise than as the sole representative of himself, herself, or itself, in the individual capacity specified in the several respective appearances filed.

II.

The Court erred in adjudging (by affirming the decree of the Circuit Court) that the appellant Southern Pacific Railroad Company is indebted to the United States at the rate of $1.25 per acre, or at any rate, or at all, with interest at the rate of six, or any, per cent, for all or any of the land found by the Circuit Court decree to have been sold to bona fide purchasers and described in Subdivision II of the Circuit Court decree; and herein

(a). The Court erred in adjudging that the appellant Southern Pacific Railroad Company is indebted to the United States at the rate of $1.25 per acre, or at any rate, or at all, with interest at the rate of six, or any, per

cent, for any of the lands described in said subdivision II of the Circuit Court decree and therein adjudged confirmed to bona fide purchasers who were not expressly named in the bill of complaint as parties to the suit; and

(b). The Court erred in adjudging that the appellant Southern Pacific Railroad Company is indebted to the United States at the rate of $1.25 per acre, or at any rate, or at all, with interest at the rate of six, or any, per cent, for any of the lands described in subdivision II of the Circuit Court decree and therein adjudged confirmed to bona fide purchasers.

III.

The Court erred in adjudging (by affirming the decree of the Circuit Court) that the appellant Southern Pacific Railroad Company is indebted to the United States for the several, or any, sums of money received from any purchaser, or purchasers, named and referred to in subdivision III of the Circuit Court decree.

IV.

The Court erred in holding (by affirming the decree of the Circuit Court) that the patents issued to the Southern Pacific Railroad Company for lands described in subdivision IV of the Circuit Court decree were erroneously issued; and in not holding and adjudging that all such patents were duly and properly issued as conveyances of land within the indemnity limits of the grant made to the Southern Pacific Railroad Company by the Act of Congress of July 27th, 1866, therein referred to.

V.

The Court erred in adjudging (by affirming the decree of the Circuit Court) that the appellant Southern Pacific Railroad Company is indebted to the United States at the rate of $1.25 per acre, or at any rate, or at all, with interest at the rate of six, or any, per cent, for all or any of the lands found to have been sold to bona fide purchaser, and described, in subdivision IV of the decree; and herein

(a). The Court erred in so holding that the appellant Southern Pacific Railroad Company is indebted to the United States at the rate of $1.25 per acre, or at any rate, or at all, with interest at six, or any, per cent, for any of the lands described in subdivision IV of the decree and therein adjudged confirmed to bona fide purchasers who are not expressly named in the bill of complaint as parties to the suit; and

(b). The Court erred in so adjudging that the appellant Southern Pacific Railroad Company is indebted to the United States at the rate of $1.25 per acre, or at any rate, or at all, with interest at six, or any, per cent, for any of the lands described in subdivision IV of the Circuit Court decree and therein adjudged confirmed to bona fide purchasers.

VI.

The Court erred in adjudging and decreeing (by affirming the decree of the Circuit Court) that the United States have and recover of and from the appellant Southern Pacific Railroad Company the sum of $33,596.92, or any other sum, or at all, with interest at six,

or any, per cent or for costs of suit in any sum or sums; and herein

(a). The Court erred in so finding and adjudging that the appellant Southern Pacific Railroad Company is indebted to the United States in the sum of $33,192.79, or any sum, or at all, for 26,554.23 acres of land, or any acres of land, erroneously, or otherwise, patented by the United States unto the said Southern Pacific Railroad Company and by it sold to bona fide purchasers from whom it received in payment therefor a sum equal to or in excess of $1.25 per acre; and

(b). The Court erred in so finding and adjudging that the appellant Southern Pacific Railroad Company is indebted to the United States in the sum of $404.13, or in any other sum, or at all, received by said Company from any land sale, or land sales, made by it at less than $1.25 per acre.

VII.

The Court erred in not adjudging that these appellants go hence, with a judgment against appellee for their costs herein so unjustly sustained.

VIII.

Wherefore the appellants pray that the said decree be reversed in all the respects and particulars herein assigned or specified as error; and that the said Circuit Court be directed to enter a decree dismissing the bill of complaint of the plaintiff.

WM. SINGER, Jr.,
Attorney for Appellants.

WM. F. HERRIN,
Counsel for Appellants.

[Endorsed]: No. 956. U. S. Circuit Court of Appeals, Ninth Circuit. Southern Pacific Railroad Co. et al. vs. The United States. Assignment of Errors. Filed November 3, 1904. F. D. Monckton, Clerk. Wm. Singer, Jr., No. 49 Second St., San Francisco, Cal., Atty. for Appellants.

In the United States Circuit Court of Appeals, Ninth Circuit.

SOUTHERN PACIFIC RAILROAD COMPANY et al.,
Appellants,
vs.
No. 956.
THE UNITED STATES,
Appellee.

Bond on Appeal to the Supreme Court of the United States.

The undersigned, the National Surety Company, a corporation, duly organized and doing business under and by virtue of the laws of the State of New York, and duly licensed for the purpose of making, guaranteeing, or becoming a surety upon bonds or undertakings required or authorized by the laws of the State of California, is held and firmly bound unto the United States of America, in the sum of thirty-seven thousand dollars ($37,000) for the payment of which, well and truly to be made, the said National Surety Company binds itself, its successors and assigns, firmly by these presents.

The above-named appellants have been allowed an appeal to the Supreme Court of the United States, and a supersedeas, from the decree entered in the above-entitled court and cause on October 19, 1904; and the condition of this obligation is, that if the appellants shall prosecute their said appeal to effect, and answer all damages and costs if they fail to make their appeal good then this obligation to be void; otherwise to remain in full force.

Dated, signed and sealed on November 2d, 1904.

[Seal] NATIONAL SURETY COMPANY,

By FRANK L. GILBERT,

Resident Vice-President.

SHIRLEY W. JOHNSON,

Resident Asst. Secretary.

The foregoing bond is approved.

WM. B. GILBERT,

Judge.

[Endorsed]: No. 956. U. S. Circuit Court of Appeals, Ninth Circuit. Southern Pacific Railroad Co. et al. vs. The United States. Bond on Appeal. Filed November 3, 1904. F. D. Monckton, Clerk. Wm. Singer, Jr., No. 49 Second St., San Francisco, Cal., Atty. for Appellants.

United States Circuit Court of Appeals for the Ninth Circuit.

THE SOUTHERN PACIFIC RAILROAD COMPANY et al.,
Appellants,
vs.
THE UNITED STATES OF AMERICA,
Appellee.
No. 956.

Certificate of Clerk U. S. Circuit Court of Appeals to Proceedings, etc.

I, Frank D. Monckton, Clerk of the United States Circuit Court of Appeals for the Ninth Circuit, do hereby certify the foregoing thirty-seven (37) pages, numbered from one (1) to thirty-seven (37) inclusive, to be a true copy of the assignment of errors and of all proceedings had in the above-entitled case in the said the United States Circuit Court of Appeals for the Ninth Circuit, including the opinion filed, as the same remain of record in my office; and that the same in connection with the preceding certified copy of the printed transcript of record upon appeal from the United States Circuit Court for the Southern District of California

constitute a true copy of the printed record upon which the above-entitled case was heard in the said Circuit Court of Appeals and of all proceedings had therein, and the transcript of record upon appeal to the Supreme Court of the United States in the above-entitled case.

Attest my hand and the seal of the said, the United States Circuit Court of Appeals for the Ninth Circuit, at San Francisco, California, this 30th day of November, A. D. 1904.

[Seal] F. D. MONCKTON,
Clerk.

Citation.

UNITED STATES OF AMERICA—ss.

To the United States of America, Greeting:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States, to be holden at Washington, D. C., on December 30th, 1904, pursuant to an appeal filed in the clerk's office of the United States Circuit Court of Appeals for the Ninth Circuit, wherein the Southern Pacific Railroad Company and others are appellants and The United States is appellee, to show cause, if any there be, why the decree rendered on October 19th, 1904, by the said United States Circuit Court of Appeals against the appellants, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Given under my hand, at the city of San Francisco, in the Ninth Circuit, on November 3d, 1904.

WM. B. GILBERT,

Judge.

Due service of the foregoing citation, by copy, admitted on November fifth, 1904.

JOSEPH H. CALL,

Special Assistant U. S. Attorney.

[Endorsed]: No. 956. U. S. Circuit Court of Appeals, Ninth Circuit. Southern Pacific Railroad Co. et al. vs. The United States. Citation. Filed Nov. 21, 1904. F. D. Monckton, Clerk. Wm. Singer, Jr., No. 49 Second St., San Francisco, Cal., Atty. for Appellants.

FILE COPY.

Supreme Court of the United States.

OCTOBER TERM, 1905.

Office Supreme Court U. S.
FILED
JAN 15 1906
JAMES H. MCKENNEY,
Clerk.

No. 141.

THE SOUTHERN PACIFIC RAILROAD COMPANY, HOMER S. KING, Trustee, and CENTRAL TRUST COMPANY OF NEW YORK,

Appellants,

against

THE UNITED STATES.

APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT.

BRIEF OF APPELLANTS.

MAXWELL EVARTS,
Of Counsel for Appellants.

C. G. BURGOYNE, Walker and Centre Streets, N. Y.

SUPREME COURT OF THE UNITED STATES,

OCTOBER TERM, 1905.

No. 141.

THE SOUTHERN PACIFIC RAILROAD COMPANY, HOMER S. KING, Trustee, and CENTRAL TRUST COMPANY OF NEW YORK,

Appellants,

AGAINST

THE UNITED STATES.

APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT.

BRIEF OF APPELLANTS.

Statement.

This cause was begun on April 13, 1899, by the filing by the United States of a bill in equity in the United States Circuit Court for the Southern

District of California. The bill of complaint is long and voluminous, but the apparent and only purpose of the bill is to recover from the defendant Railroad Company $1.25 per acre, or the government price of certain land erroneously patented by the Government to the Railroad Company and sold by the latter to *bona fide* purchasers. The cause of action was based upon the Acts of Congress of March 3, 1887, and February 12, 1896, and more especially upon the provisions of Section 2 of the Act of Congress of March 2, 1896, which are as follows:

> "That if any person claiming to be a *bona fide* purchaser of any lands erroneously patented or certified shall present his claim to the Secretary of the Interior prior to the institution of a suit to cancel a patent or certification, and if it shall appear that he is a *bona fide* purchaser, *the Secretary of the Interior shall request that suit be brought in such case against the patentee or the corporation, company, person or association of persons for whose benefit the certification was made, for the value of said land, which in no case shall be more than the minimum government price thereof*, and the title of such claimant shall stand confirmed."

The land in question referred to in Exhibit A, attached to the bill of complaint, is within the limits of the grant to the Atlantic and Pacific Railroad Company, under the Act of Congress of July 27, 1866 (14 U. S. Stat., 292), which was forfeited to the United States by the Act of Congress of July 6, 1886 (24 U. S. Stat., 123).

The larger part of the land covered by Exhibit A, is within the primary limits of the Southern Pacific Branch Line grant of March 3, 1871 (16 U. S. Stat., 573). Some of the land referred to in Exhibit A attached to the complaint is within the indemnity limits of the Southern Pacific Main Line grant of July 27, 1866 (14 U. S. Stat., 292) and the remainder of the land is either not patented to or was never claimed by the Southern Pacific Railroad Company.

The greater part of the bill of complaint seems to be by way of introduction, and not until towards the end and at page 17 of the record is there anything said which indicates why the suit was brought. It is then claimed that under the Acts of Congress referred to therein, a contract was created between the United States and the Railroad Company by which the latter agreed to pay to the United States the government price on all

land erroneously patented to the railroad and sold by the latter to *bona fide* purchasers. The allegations of the bill in this regard are as follows (Record, p. 17):

> "Your orator contends that said acts of Congress constitute a valid contract between your orator and said railroad company whereby it was agreed and understood that where any land was erroneously certified or patented to said company and sold by said company to a *bona fide* purchaser, that the United States had granted to and confirmed the title of the United States to such *bona fide* purchaser and not to or for the benefit of said railroad company, and that in such case it was further agreed and understood that said railroad company would account to and pay over to the United States the value of such land, not exceeding the Government price, and in case of a sale by executory contract where less than the government price had been received, would account to and pay over to the United States the amount received by said company upon such sales."

Prior to the portion of the bill above quoted, there is nothing beyond recitals of the various land grants to the Atlantic and Pacific and the

Southern Pacific, the many litigations between the Government and the appellant Railroad Company and extracts from Acts of Congress, except the statement at page 15 of the Record, that the individual defendants represented a class, which was too numerous to make all of them parties to the bill.

On the page of the bill of complaint following the page from which the quotation is taken comes the prayer of the Government for relief which is as follows:

> "Your orator, having no plain, speedy and adequate remedy at law prays that the Court will determine the true construction of said Acts of Congress and define the rights and obligations of your orator and of defendant railroad company thereunder and will determine the right and title of your orator to said lands described in said Exhibit 'A' and will determine what of said lands have been sold by defendant Southern Pacific Railroad Company to *bona fide* purchasers and will vacate and annul the patents for such of said lands as have not been sold by said company to *bona fide* purchasers, and quiet the title of your orator thereto.

"That defendant Southern Pacific Railroad Company be enjoined from commencing, prosecuting or maintaining all suits and actions against any persons for the foreclosure of contract or recovery of purchase price for any lands described in Exhibit 'A,' to this bill.

"That as to those lands which have been sold by said defendant Southern Pacific Railroad Company to *bona fide* purchasers the Court will require said railroad company to account to your orator for the value of such lands or such sum as has been received by said company from sales of said lands and pay over such sums to your orator or into this Honorable Court for the benefit of your orator."

As will be seen, the prayer for relief begins with the request that the court will determine whether there is a contract between the United States and the Railroad Company under the Acts of Congress referred to. The suggestion that the court should determine the title of the Government to the land is hardly a ground for the interference of equity.

The balance of the first paragraph of the prayer seems to be in the nature of a bill of

discovery which was completely answered by the railroad, and which answer therefore then and there ended any ground of equitable jurisdiction.

The last paragraph of the prayer for relief, while it speaks of the railroad accounting to the complainant, is merely a prayer that the defendant be required to pay to the complainant the government price of $1.25 per acre for land sold by it to *bona fide* purchasers. This can hardly be seriously called an account, as all that was necessary to ascertain the amount due was to multiply the number of acres sold by $1.25.

Without regard, therefore, to the language of the bill of complaint, and the suggestion that large numbers of people were represented by the individual defendants, and that there were complex accounts, all of which was introduced to give color of right to sue in equity, and looking at the substance of the bill and not its form, the suit would seem to have been brought simply to recover from the Railroad Company under the Act of Congress of March 2, 1896 (29 U. S. Stat., 42), the government price of $1.25 an acre for the land erroneously patented to the railroad and sold by it to *bona fide* purchasers.

This view is certainly sustained by the final

decree entered in the suit, and it would seem to be eminently proper to examine such decree in order to ascertain the purpose for which the suit is brought.

An examination of this decree subdivision by subdivision will show that the entire relief awarded, was the direction that the railroad should pay the United States $1.25 for the land erroneously patented to the railroad and sold by the latter to *bona fide* purchasers. (Record, p. 201).

In the first subdivision of the decree the court simply found that the lands referred to therein were situated within the Southern District of California.

In the second subdivision of the decree, the court found and determined that as to the land referred to therein the Railroad Company was indebted to the United States for all the land sold by it at the rate of $1.25 per acre, with interest at 6 per cent. from the date of the decree.

In the third subdivision of the decree, the court found and determined that as to all the land described therein the Railroad Company was indebted to the United States for the amounts received by it from the purchasers of the land erroneously patented to the railroad.

In the fourth subdivision of the decree the court found and determined that the Railroad Company was indebted to the United States for all of the land referred to in said subdivision at the rate of $1.25 per acre, with interest from the date of the decree.

In the fifth and sixth subdivisions of the decree, the bill of complaint was dismissed without prejudice as to certain of the land referred to in said subdivisions.

In the seventh subdivision of the decree, it is adjudged that the Railroad Company has no interest in the land therein mentioned.

In the eighth and last subdivision of the decree, the court found and determined that the Railroad Company was indebted to the United States in the sum of $33,192.79 for 26,554$^{23}/_{100}$ acres of land at $1.25 per acre, erroneously patented to the Railroad Company by the United States, and by the former sold to *bona fide* purchasers, together with the sum of $404.73, received by the Railroad Company from land erroneously patented by the United States to the Railroad Company and sold by the latter for less than $1.25 per acre, making in all the sum of $33,596.92, and it was adjudged that the United States recover from the Railroad

Company said sum of money with interest at six per cent.

It is clear from this examination of the final decree that the effective result of the suit was, simply to enable the United States to recover from the Railroad Company a sum of money claimed to be due to the United States by reason of the provisions of the Act of March 2, 1896, and nothing else, and that such result would have been as completely and adequately obtained in an action in debt or *assumpsit*.

Answers were filed to the complaint by the Railroad Company and other defendants and to the answer of the Railroad Company was attached an exhibit (Record, p. 74), showing the sales made by the railroad of the land referred to in Exhibit A attached to the bill of complaint. This was filed in response to the amendment to the bill of complaint (Record, p. 38).

There was no long and difficult trial of the cause. There was a stipulation as to the evidence (Record, pp. 256, 279). The rest of the evidence consisted almost entirely of the pleadings and records in various litigations between the Government and the Southern Pacific Railroad Company.

When the case came on for final hearing, the

point was raised by the railroad for the first time, that the case was not one to be tried by a court of equity, but that the complainant had a full, complete and adequate remedy at law. It was insisted that the suit was in effect an action to recover *in assumpsit* from the railroad $1.25 an acre for all land erroneously patented to it and sold by it to *bona fide* purchasers; that equity had no jurisdiction over such an action, and that the case should be dismissed upon that ground.

This contention was decided against the Railroad Company and upon appeal to the United States Circuit Court of Appeals for the Ninth Circuit, the judgment of the court below was affirmed. From the latter judgment this appeal has been taken, and the two questions presented are:

1. Did the trial court as a court of equity have jurisdiction of this suit, or was it ousted of such jurisdiction, by the fact that the complainant had a plain, complete and adequate remedy at law, and could such objection be raised for the first time at final hearing?

2. Has Congress the constitutional power, upon confirming the title of a *bona fide* purchaser to land erroneously patented to a railroad, and

sold by the latter to such *bona fide* purchaser, arbitrarily to require the Railroad Company to pay to the United States $1.25 an acre for such land?

Specification of Errors.

The Circuit Court of Appeals, for the Ninth Circuit, erred in the following particulars:

I.

In not reversing the final decree of the Circuit Court of the United States for the Southern District of California.

II.

In adjudging that the Southern Pacific Railroad Company was indebted to the United States at the rate of $1.25 per acre, or at any rate or at all, for or on account of the land found by the court to have been sold by the Railroad Company to *bona fide* purchasers.

III.

In holding that the United States was entitled to recover of and from the Southern Pacific Railroad Company the sum of $33,596.92, or any other sum or at all, with interest at 6 per cent.

IV.

In holding that it had jurisdiction of the cause.

V.

In not holding that the complainant had a complete and adequate remedy at law, and that the court was without jurisdiction of the cause.

VI.

In holding that any person or persons not specifically mentioned as defendants in the complaint, were too numerous to be made parties, and that such persons were represented in the cause by the defendants who appeared or answered therein.

FIRST POINT.

As the Complainant had a full, complete and adequate remedy at law, jurisdiction of the case in equity was wanting.

I.

It will no doubt be claimed by counsel for the Government that the objection that the court had no jurisdiction of the cause came too late, and should have been made by plea, demurrer or answer, and that after compelling the complainant to go to the expense of trial, it was not open to the defendant to say that the court was without jurisdiction. The court below said (Record, p. 793):

> "Appellant filed its answer to the merits of the bill, without any demurrer, plea or other objection, to the jurisdiction in equity. The government was, therefore, put to the *expense* of taking the testimony, and the cause was submitted to the court and tried upon its merits. The first objection to the jurisdiction of the Court upon this ground was made in the argument of counsel for appellant at the hearing."

The point urged and sustained in the court below that the objection was too late because of

the *expense* incurred by the Government in taking testimony, is not a very substantial one, as there was in fact no testimony taken in the case at bar beyond a mere page or two. The evidence outside the stipulation was chiefly records in former litigations, and practically no expense was incurred by the Government.

In such a case, therefore, as the one at bar, in which the complainant's remedy at law is complete and adequate, and the case is nothing more than an action of debt, and in which no costly proceedings have been imposed upon the complainant by the failure of the defendant to object in his pleadings to the jurisdiction of the court of equity, the rule seems to be that the objection taken for the first time at the hearing is good.

In the case of *Litchfield vs. Ballou*, 114 U. S., 190, it appeared that a bill in equity was filed in the United States Circuit Court for the Southern District of Illinois, in which the complainant sought to recover from the city of Litchfield, money paid by him for certain bonds issued by the city. In the bill were charges to the effect that the complainant had been misled in the purchase of the bonds by false statements of the officers, agents and attor-

neys of the city, to the effect that the bonds were valid. Other parties came into the litigation and answers were filed by the various defendants. The answer of the city denied any false representations as to the character of the bonds sold to the complainant. The case came to issue and testimony was taken therein, and there was no evidence of any false representations made by the authorized agents of the city. The complainant was successful in the court below, and upon appeal to this Court, the case was reversed on the Court's own motion upon the ground that the complainant's appropriate remedy was by an action at law against the city. At page 192 the Court said:

> "If the city is liable for this money, an action at law is the appropriate remedy. An action for money had and received to plaintiffs' use is the usual and adequate remedy in such cases where the claim is well founded, and the judgment at law would be the exact equivalent of what is prayed for in this bill, namely, a decree for the amount against the city, to be paid within the time fixed by it for ulterior proceedings.
>
> "In this view the present bill fails for want of equitable jurisdiction."

We desire to point out here how a judgment at law in the case at bar would be the exact equivalent of what is awarded to the complainant in this suit, viz., a sum of money computed by multiplying by $1.25 the number of acres erroneously patented to the Railroad Company and sold by it.

In *Lewis* vs. *Cocks*, 23 Wall., 466, a bill in equity was filed by the complainant below in the United States Circuit Court for the District of Louisiana. From this it appeared that one, Anderson, alleging himself to be a creditor of Cocks, had filed a petition in the Provisional Court of New Orleans, in which proceeding Cocks, then absent from the State, was condemned to pay the amount for which Anderson alleged himself to be a creditor. Judgment by default was given for Anderson, and execution having issued, two houses and lots, the property of Cocks, were sold to a man named Izard. Anderson having died and Cocks having returned to New Orleans upon the termination of the rebellion, filed his bill against Izard, praying that he be decreed to execute in his favor a deed of the property on receiving the price paid by him for the same. The relief prayed for was

upon the ground among other things that Izard was guilty of a gross fraud in regard to the sale of the property by the Marshal in the proceeding in the Provincial Court. Answer was filed to the bill, and Lewis, who had become the purchaser of the property at foreclosure sale, was substituted as defendant, and he also answered. The case was tried, and on the hearing the weight of the evidence appeared to show that the fraud alleged against Izard had not been committed by him. The circuit court, however, decreed in favor of the complainant, and upon appeal to this Court, the case was reversed upon the ground that the appeal did not state an equitable cause of action, but that the complainant had a complete and adequate remedy by an action of ejectment. At page 469 the Court said:

> "The fraud charged upon Izard is expressly denied by his answer and is not sustained by the evidence. There is a decided preponderance against it. We are unanimous upon the point. * * *
>
> "The remaining part of the case is that which relates to the allegations of the non-service of process.
>
> "In considering the bill, we must regard it as being just as it would be if it contained

nothing but what relates to this subject. Everything else must be laid out of view. * * *

"If the bill alleged only the nullity of the judgment, under which the premises were sold, by reason of the non-service of the original process in the suit, wherefore the defendant had no day in court, and judgment was rendered against him by default, and upon those grounds had asked a court of equity to pronounce the sale void, and to take the possession of the property from Izard and give it to the complainant, could such a bill be sustained? Such is the case in hand. There is nothing further left of it, and there is nothing else before us. Viewed in this light, it seems to us to be an action of ejectment in the form of a bill in chancery. According to the bill, excluding what relates to the alleged fraud, there is a plain and adequate remedy at law, and the case is one peculiarly of the character, where, for that reason, a court of equity will not interpose. * * *

"*In the present case, the objection was not made by demurrer, plea, or answer, nor was it suggested by counsel, nevertheless if it clearly exists, it is the duty of the court sua sponte to recognize it and give it effect.*"

> "It is the universal practice of courts of equity to dismiss the bill if it be grounded upon a merely legal title. In such case the adverse party has a constitutional right to a trial by jury. * * *
>
> "In the present case the bill seeks to enforce 'a merely legal title.' An action of ejectment is an adequate remedy. The questions touching the service of the process can be better tried at law than in equity. If it be desired to have any rulings of the court below brought to this court for review, they can be better presented by bills of exception and a writ of error than by depositions and other testimony and an appeal in equity."

As it seems to us, the bill in the case at bar seeks to enforce the rights of the United States under what is alleged to be this contract with the Railroad Company by reason of the provisions of the Acts of March, 3, 1887, February 12, 1896, and March 2, 1896, and the true remedy to enforce such rights (if any) is by an action at law to recover the amount alleged to be due, which is computed by simply multiplying the number of acres claimed to have been patented by mistake to the Railroad Company and sold by it to *bona fide* purchasers by the established

rate under said Act, of $1.25 per acre. To use the words of Judge SWAYNE, there would seem to be "nothing further left of it [the bill], and there is nothing else before us."

It will be observed that in the Lewis case, the objection that the court was without jurisdiction because the complainant had an adequate remedy at law was not made until the suit reached this Court, and was not then even suggested by counsel, but was raised by the Court upon its own motion.

The case of *Killian vs. Ebbinghaus*, 110 U. S., 568, was in substance and effect an ejectment bill. The complainant below was successful, but on appeal to this court the case was dismissed upon the ground that the complainant had a complete and adequate remedy at law. The suggestion that the court was without jurisdiction was not made by counsel, but this Court on its own motion dismissed the case, saying at page 574:

> "This objection to the jurisdiction may be enforced by the court *sua sponte*, though not raised by the pleadings or suggested by counsel. * * *
>
> These and many similar authorities, which

> it is unnecessary to cite, are applicable to the case in hand. They show that the court below was without jurisdiction to entertain the suit and render the decree appealed from."

In *Allen vs. Pullman Palace Car Co.*, 139 U. S., 658, the syllabus is as follows:

> "When in a suit in equity this court finds, *on examining the proofs*, nothing which makes a proper case for equity, it is its duty to recognize the fact, and give it effect though not raised by the pleadings, nor suggested by counsel."

An examination in the present case of the pleadings and the proofs and the final decree shows that there was nothing which made this suit a proper case for equity. There is no application made to cancel patents which have been granted to the Railroad Company. The proof is that all the lands referred to in the bill of complaint have been sold to *bona fide* purchasers, except portions of land mentioned in the bill, as to which the bill has been dismissed, or as to which the Railroad Company has never made any claim of title. There is no multiplicity of suits to be avoided, as the claim of the United States against

the Railroad Company in regard to these lands could be enforced in one action at law. All suggestions as to the necessity of a discovery have been disposed of by the answer of the Railroad Company. It is not clear, therefore, how there is anything in this case, in the proofs any more than in the pleadings, which makes it a proper one for a court of equity, and although the objection may not have been raised by demurrer or answer, yet it is the duty of this Court, as was stated by Mr. Chief Justice FULLER, "to recognize the fact, and give it effect though not raised by the pleadings, nor suggested by counsel."

In *Mills* vs. *Knapp*, 39 Fed. Rep., 592, a bill in equity was filed to recover from the defendan $8,221.16, as the proceeds belonging to the complainant's intestate resulting from the purchase and sale by the defendant of 200 shares of capital stock of the Adams Express Company, which it was claimed the defendant bought and sold for the plaintiff's intestate. The prayer of the bill was that the defendant should account for and pay over to the plaintiff, all such gains and profits as accrued and arose or were earned and received by the defendant on the

purchase and sale of the 200 shares of stock. An answer was filed, but it did not "raise the question that the plaintiff has a plain, adequate or complete remedy at law." The testimony was taken, and the case heard on the pleadings and proofs. Mr. Justice BLATCHFORD, then sitting as Circuit Justice for the Second Circuit, dismissed the bill upon the ground that the court had no jurisdiction of the suit, because the plaintiff had a plain and adequate remedy at law, and that it was not necessary that such objection should be raised by plea or answer. At page 595, he said:

> "Besides this, the plaintiff, on the face of his bill, has a plain, adequate, and complete remedy at law. He declares in his bill that the amount he is entitled to recover is $8,221.16 as of October 12, 1871. He asks for no discovery. He shows that no accounting under the direction of the court is necessary, for he makes the accounting himself in his bill. The prayer that the defendant may 'account for and pay over' 'such gains and profits,' which he fixes at a specified amount, is no more than a prayer that the defendant pay over such specified amount. No other equitable relief is asked. *In such a case it is not necessary that the objection*

> *should have been taken in limine in the answer.* It is taken at the hearing and that is sufficient. This is not a case where it is competent for a court of equity to grant the relief asked. * * * It is governed by the rule laid down in *Lewis vs. Cocks*, 23 Wall., 466, where the court, finding the case to be an action of ejectment in the form of a bill in Chancery, ordered the bill to be dismissed, although the objection was not made by demurrer, plea or answer or suggested by counsel, saying that as it clearly existed, it was the duty of the Court *sua sponte* to recognize it and give it effect. It results from these views that, without inquiring into the merits of the case, the bill must be dismissed with costs."

The court below declined to follow the foregoing authorities, and seemed to be of the opinion that the cases of *Kilbourn vs. Sunderland*, 130 U. S., 505, and *Brown vs. Lake Superior Iron Co.*, 134 U. S., 530, were controlling. The error which it is believed the court below made was in not keeping in mind that the question of whether there was a case for the equitable interposition of a court of equity was to be determined from a consideration of the pleadings and the proofs.

This is certainly the law as stated in the cases we have referred to. The view of the court below was the narrow one that the allegations of the bill itself were alone to determine the question of equitable jurisdiction of the court.

As we understand it, the Kilbourn case presents a very different situation than is found in the case at bar. There charges of fraud were made in the bill, involving the consideration of questions applicable to fiduciary and trust relations, and that as fraud had a more extensive signification in equity than it had in law, it was proper for the court to retain jurisdiction of the case, although the complainant might also have a remedy at law, and that in such a case the court would require that the objection that the complainant had an adequate remedy at law should be taken at the earliest opportunity and before the complainant is put to the expense of a trial. In other words, the Kilbourn case was especially a case for the interposition of equity, and came under a well recognized equitable head, viz., where a charge of fraud is made arising from fiduciary relations of the parties.

The same reasoning is to be found in the case of *Brown vs. Lake Superior Iron Co.*, 134 U. S.,

530, where the decision that the objection that the court had no jurisdiction in equity should have been raised at the outset, is based upon the principle that the subject-matter of the Brown case was one belonging to a class over which a court of equity had jurisdiction, and that under the peculiar circumstances of the Brown case, it was not fitting for the Iron Company to acquiesce for a long period of time in the proceedings taken by the creditors of the Company, and then suddenly after having put the other parties to great expense, change its policy and contest what it had theretofore acquiesced in.

In other words, the Kilbourn and Brown cases, holding that the objection that the complainant has a complete and adequate remedy at law must be made *in limine*, either by demurrer or answer, are based upon the ground that in each case the subject matter of the suit was within the general equitable jurisdiction of the court, and that complainant had a remedy both at law and in equity, and that in such a case, the objection must be raised at the outset.

Such, however, is not the situation in the case at bar in which the remedy of the complainant is an action of debt and the underlying distinc-

tion between the doctrine of the Kilbourn case and the line of authorities which we have cited beginning with Lewis vs. Cocks, 23 Wall, 466, is well brought out in the case of *Hoey vs. Coleman*, 46 Fed. Rep., 221, where Judge WALLACE held that the objection that the complainant had a plain, adequate and complete remedy at law is jurisdictional, and that where such remedy exists, the bill must be dismissed notwithstanding the fact that the objection is not raised by the defendant either by plea, demurrer or answer. In his opinion he refers to the Brown case, but follows the line of decisions which we have cited prior to the Brown case, which have been approved by this Court in its decisions subsequent to the Brown case. In his opinion at page 223, he says:

> "Upon the authority of *Shelton v. Platt*, 11 Sup. Ct. Rep. 646, (decided by the supreme court, April 6, 1891), the present bill must be dismissed, because the case made is one in which there is plain, adequate and complete remedy at law. It had been adjudged frequently by the supreme court prior to the cases of *Reynes v. Dumont*, 130 U. S. 254, 9 Sup. Ct. Rep. 486, and *Brown v. Iron Co.*, 134 U. S. 354, 10 Sup. Ct. Rep. 604, that the objection that there is plain and adequate

remedy at law is jurisdictional, and should be enforced by the court of its own motion; but in those cases the court indicated that the objection should not be entertained in a case where the relief sought is of an equitable nature, unless it is raised by the defendant before he enters upon his defense at large; that is, by demurrer or plea. The defendants have not raised this objection even by answer. The averment of the answer that the laws of the State of New York provide a simple, speedy and adequate method for the review and cancellation of an erroneous or illegal assessment does not present a defense. Parties who are entitled to resort to the federal courts to have their rights adjudicated cannot be turned away because state laws may give them an adequate remedy in the state court. In the case of *Allen v. Car Co.*, 11 Sup. Ct. Rep., 682 (decided April 13, 1891), the supreme court has dismissed a bill filed to restrain the collection of a tax, upon the ground that there was an adequate remedy at law, notwithstanding the objection was raised in that court in the first instance, and had not been taken by plea, demurrer or answer in the circuit court. In the opinion the cases of *Reynes v. Dumont* and *Brown v.*

> either of the courts of the United States in any case where a plain, adequate, and complete remedy may be had at law."

Under the Seventh Amendment to the Federal Constitution it is provided that,

> "In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved."

Now this right of trial by jury cannot be taken from a litigant simply by blending a claim properly cognizable at law with a demand for equitable relief. The defendant cannot be deprived of his right to trial by jury simply by the complainant making in his pleading a colorable case for the interposition of a court of equity. It is, therefore, claimed that in this case equity has no jurisdiction, not only because of the prohibition of the Act of Congress against the bringing of a proceeding in a court of equity when the complainant has an adequate remedy at law, but also upon the ground that the defendant is entitled to try his case before a jury, and cannot be deprived of such right without his express consent.

In *Scott* vs. *Neely*, 140 U. S., 106, a bill in equity was filed to subject to the payment of a debt alleged to be due and owing to the com-

plainant by the defendant, certain property owned by the latter. There were dealings between the defendant and the complainant under which the latter owed to the complainant a balance of money amounting to over $8,000. In aid of the suit to subject the property of the defendant to the payment of this sum, there was a prayer to set aside as fraudulent conveyances of the defendant to his wife. Issue was joined and the replications to the answers were filed, testimony was taken and the case was heard. A decree was entered in favor of the complainant. From this decree the defendant appealed to this Court, and on the motion of this Court, without apparently any suggestion from counsel, the case was reversed and the bill dismissed upon the ground that the case was not one for the cognizance of a court of equity, and that the claim was one properly to be brought in an action at law. Mr. Justice FIELD, in the course of his opinion, at page 109 said:

> "At the outset of the case the question is presented whether a suit of this kind, where the complainant is a simple contract creditor, can be maintained in the courts of the United States. * * *

"In the case before us the debt due the complainants was in no respect different from any other debt upon contract; it was the subject of a legal action only, in which the defendants were entitled to a jury trial in the federal courts. Uniting with a demand for its payment, under the statute of Mississippi, a proceeding to set aside alleged fraudulent conveyances of the defendants, did not take that right from them, or in any respect impair it.

"This conclusion finds support in the prohibition of the law of Congress respecting suits in equity. The 16th section of the Judiciary Act of 1789 enacted that such suits 'shall not be sustained in either of the courts of the United States in any case where plain, adequate and complete remedy may be had at law;' and this prohibition is carried into the Revised Statutes, Sec. 723. It is declaratory of the rule obtaining and controlling in equity proceedings from the earliest period in England, and always in this country. And so it has been often adjudged that whenever, respecting any right violated, a court of law is competent to render a judgment affording a plain, adequate and complete remedy, the party aggrieved must seek his remedy in such

court, not only because the defendant has a constitutional right to a trial by jury, but because of the prohibition of the Act of Congress to pursue his remedy in such cases in a court of equity. * * * *All actions which seek to recover* specific property, real or personal, with or without damages for its detention, *or a money judgment for breach of a simple contract*, or as damages for injury to person or property, *are legal actions and can be brought in the federal courts only on their law side.* Demands of this kind do not lose their character as claims cognizable in the courts of the United States only on their law side, because in some state courts, by virtue of state legislation, equitable relief in aid of the demand at law may be sought in the same action. Such blending of remedies is not permissible in the courts of the United States. * * *

"It follows from the views expressed that the court below could not take jurisdiction of this suit, in which a claim properly cognizable only at law is united in the same pleadings with a claim for equitable relief."

In the case of *Buzard* vs. *Houston*, 119 U. S., 347, this whole matter is discussed at considerable length by Mr. Justice GRAY, and the judgment

below was reversed by this Court upon the ground that a court of equity will not sustain a bill in a case of fraud which seeks only to obtain a decree for the payment of money, when the same amount might be recovered in an action at law. In his discussion of the matter, Mr. Justice GRAY, says at page 351, as follows:

> " In the Judiciary Act of 1789, by which the first Congress established the judicial courts of the United States, and defined their jurisdiction, it is enacted that 'suits in equity shall not be sustained in either of the courts of the United States, in any case where plain, adequate and complete remedy may be had in law.' Act of September 24, 1789, * * * Five days later, on September 29, 1789, the same Congress proposed to the legislatures of the several states the article afterwards ratified as the seventh amendment of the Constitution, which declares that 'in suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved.' 1 Stat., 21, 98.
>
> " The effect of the provision of the Judiciary Act, as often stated by this court, is that 'whenever a court of law is competent to take cognizance of a right, and has power

to proceed to a judgment, which affords a plain, adequate and complete remedy, without the aid of a court of equity, the plaintiff must proceed at law, because the defendant has a constitutional right to a trial by jury.' *Hipp vs. Babin*, 9 How., 271, 278; *Insurance Co. vs. Bailey*, 13 Wall., 616, 621; *Grand Chute vs. Winegar*, 15 Wall., 373, 375; *Lewis vs. Cocks*, 23 Wall., 466, 470; *Root vs. Ry. Co.*, 105 U. S., 189, 212; *Killian vs. Ebbinghaus*, 110 U. S., 568-573. In a very recent case the Court said 'this enactment certainly means something; and if only declaratory of what was always the law, it must at least have been intended to emphasize the rule, and to impress it upon the attention of the courts.' *N. Y. Guaranty Co. vs. Memphis Water Co.*, 107 U. S., 205, 214.

"Accordingly, a suit in equity to enforce a legal right can be brought only when the court can give more complete and effectual relief in kind or in degree, on the equity side than on the common law side; as, for instance, by compelling a specific performance, or the removal of a cloud on the title to real estate; or preventing an injury for which damages are not recoverable at law as in *Watson vs. Southerland*, 5 Wall., 74; or where an agreement procured by fraud is of a

continuing nature, and its rescission will prevent a multiplicity of suits, as in *Boise vs. Grundy*, 3 Pet., 210, 215, and in *Jones vs. Bolles*, 9 Wall., 364, 369.

"In cases of fraud or mistake, as under any other head of chancery jurisdiction, a court of the United States will not sustain a bill in equity to obtain only a decree for the payment of money by way of damages, when the like amount can be recovered at law in an action sounding in tort or for money had and received. *Parkersburg vs. Brown*, 106 U. S., 487, 500; *Ambler v. Choteau*, 107 U. S., 586; *Litchfield v. Ballou*, 114 U. S., 190."

We, therefore, respectfully submit that the bill in the present case when examined with reference to the answer, the proof and the final decree, shows that the relief sought by the complainant was simply the recovery of so much money, easily susceptible of computation. That is to say, the complainant has sought to recover, and has by the decree been held entitled to recover, $1.25 an acre for every acre of land erroneously patented to the railroad, and by it sold to *bona fide* purchasers. There is nothing outside of this in the bill. No patent is sought to be canceled. No multiplicity of suits is sought

to be avoided. No difficult account between the parties is to be settled under the direction of the court. No ground of equitable jurisdiction can be suggested, and there is nothing to take the case out of an ordinary action to recover damages which are easily capable of ascertainment.

To use the words of Mr. Justice MILLER, in *Laçombe* vs. *Forstall's Sons*, 123 U. S., 562, 570.

> "The case is by no means a complex or difficult one. The facts are few and easily proved. The transactions are open and patent to everybody, and an action at law would afford complete and ample remedy for the wrong complained of."

Under the rulings of this Court, therefore, it would seem that the bill must be dismissed, upon the ground that the complainant had an adequate and complete remedy at law, and that such dismissal must be decreed, even though the point was not raised by demurrer or answer.

We press this point upon the Court with all the greater confidence because as we read the case of *U. S.* vs. *Winona etc. R. R.*, 165 U. S., 463, 481, it has already been intimated by this Court that the proper remedy for the government, seeking to recover the value of lands

erroneously patented to the railroad and sold by the latter to *bona fide* purchasers, is by an action at law. It was there said relating to the acts of 1887 and 1896 in regard to *bona fide* purchasers as follows:

> "If it be suggested that under the scope of these acts, though the suit must fail so far as it is one to set aside and cancel the certification, it may yet be maintained against the defendant railroad company for the value of the lands so erroneously certified, and that the decree should be modified to this extent, it is sufficient to say that, first, the Government has not asked any such decree; *second, that it may be doubtful whether for the mere purpose of recovering money an action at law must not be the remedy pursued.*"

II.

Something has been said in the briefs of the Government in the Court below as to the Court having jurisdiction of the case because of a discovery sought and an accounting required between the parties. As to this argument, if repeated in this Court, it is perhaps enough to say, as Mr. Justice BREWER said in the case of *Preston* vs. *Smith*, 26 Fed. Rep., 884, in regard to bills of discovery, "they have fallen into a

condition of 'innocuous desuetude.'" Again, in *Ex parte Boyd*, 105 U. S., 647, Mr. Justice MATTHEWS said:

> "A bill in equity to compel disclosures from a plaintiff or a defendant, of matters of fact peculiarly within his knowledge, essential to the maintenance of the legal rights of either in a pending suit at law, could scarcely be resorted to, unless under special circumstances, now, when parties are competent witnesses and can be compelled to answer under oath all relevant interrogatories properly exhibited."

In other words, if the complainant was entitled to a bill of discovery to aid it in its action at law, that was a distinct matter as to which an independent bill should have been brought which would have been satisfied upon a discovery being made by the defendant. Endeavoring to combine such a bill with an action at law is hardly a sufficient ground for depriving the defendant of its right to trial by jury, and is certainly not countenanced as a reason for taking to a court of equity causes which ought properly to be tried in a court of law. Further than that, the answer of the defendant gives a full discovery of the amount and description of the lands patented and sold,

and the amount received by the company therefor, so that the question of discovery being a ground for this suit being brought in a court of equity was ended and disposed of as soon as the answer was filed. As is said in *Tiedeman on Equity Jurisdiction* (1893, Sec. 550);

> "The bill of discovery, as presently discussed, constitutes an independent and auxiliary action, whereby the evidence is procured by compulsory disclosure of the other party, prior to the trial of the main cause of action; *and this suit for discovery comes to an end, as soon as the defendant files his sworn answer to the bill, satisfactorily complying with the order of the court to make such answer.*"

As to the matter of accounting between the parties, it is difficult to see what can be meant. It would appear to be nothing but a mere arithmetical calculation which almost anybody could do in his head. It is necessary to find out how many acres erroneously patented to the railroad were sold by it to *bona fide* purchasers and then to multiply that by $1.25. This is a simple calculation which is hardly to be dignified by calling it an accounting, and a bill for an accounting can-

not be sustained in the case at bar any more than it was in *French* vs *Hay*, 22 Wall., 231.

We therefore leave the point that this cause was properly in a court of equity because of the discovery sought, and because of the account asked, with the suggestion, that this contention could hardly have been intended to be taken seriously, inasmuch as whatever discovery was asked has been given, and because what is termed an account is merely a simple calculation in arithmetic.

SECOND POINT.

The Act of Congress of March 2, 1896, so far as it purports to give a right of action in favor of the United States to recover the government price of $1.25 an acre for all land erroneously patented to the railroad and sold by it to bona fide purchasers is unconstitutional.

Whatever right the complainant may have to file its bill in this cause is to be found in the Acts of March 3, 1887, and February 12, 1896, and in the following provision of the Act of March 2, 1896:

> "That if any person claiming to be a *bona fide* purchaser of any lands erroneously patented or certified shall present his claim to the Secretary of the Interior prior to the institution of a suit to cancel a patent or certification, and if it shall appear that he is a *bona fide* purchaser, the Secretary of the Interior shall request that suit be brought in such case against the patentee, or the corporation, company, person or association of persons for whose benefit the certification was made, for the value of said land, *which in no case shall be more than the minimum government price thereof*, and the title of such claimant shall stand confirmed."

Before the passage of these Acts, the government could not, on any theory, have brought a suit against the Railroad Company to recover any sum for lands erroneously patented to the railroad and sold by it to others. It could have sued to cancel the patents and recover back the land, and the purchasers from the railroad would be left to pursue their remedy against it under the covenants in their deeds. Prior to this Act there was no principle under which the United States could proceed directly against the railroad to recover any money received by it from the sale of land improperly patented to it.

Now it must be borne in mind that all these sales of land took place prior to the Act of 1896, and the question arises at the very outset, whether Congress can create a cause of action out of an existing transaction where there was none before, and adjudge what the exact measure of the damages shall be.

In other words, by the Act of March 2, 1896, Congress has declared that the railroad shall be liable to the United States for the lands which it has sold, and that the measure of damages shall be at the rate of $1.25 per acre. It has created the cause of action, and has adjudged in

advance what the damages shall be. That is to say the action of Congress in this regard was not legislative, but judicial, and in effect a usurpation of the power of the courts.

It is, of course, clear that the United States was perfectly free to confirm the title of *bona fide* purchasers from the railroad, of land which had been erroneously patented to the latter by the government, instead of vacating the patents therefor and recovering back the land and leaving the various purchasers to their remedy against the Railroad Company. With this the railroad had no concern. It was, of course, in no way made a party to the matter and never expressed approval or disapproval of the plan.

When, however, Congress coupled with this confirmation of the title of such *bona fide* purchasers, a provision adjudging that the railroad thereby became the debtor of the United States, and that as such debtor the measure of its liability should be $1.25 an acre for every acre sold by it, it is most earnestly insisted that Congress then stepped beyond the functions of a legislative body, and assumed to do that which under our form of government can be done only by the judicial branch thereof.

If Congress had the power to fix the amount to be paid in the suit to be brought by the Attorney-General at $1.25 an acre, why could it not just as well have said $100 or $1,000 an acre. If one function of a trial was to be set aside by Congress, why should it not have power to declare that the amount should be collected without any trial. If the measure of the liability of the defendant was to be determined in advance of the trial, why not determine the liability itself without trial.

In other words, part of the questions which it was the function of the judiciary to determine was taken from it and usurped by Congress, and an arbitrary measure of damages adopted in regard to a matter which transpired before Congress took any action in reference thereto.

The railroad never in any way consented to or requested this action on the part of Congress. It was not a party to the legislation and is not before the Court asking to take the benefit of such legislation. It is not estopped in any way from protesting against the action of Congress, and insisting that the law is not retrospective and cannot apply to transactions occurring before its passage, and that in any event, it is in violation

of Section 1 of Article III. of the Constitution of the United States, which provides that,

> "The judicial power of the United States shall be vested in one Supreme Court, and in such inferior courts as the Congress may from time to time ordain and establish."

In the case of *U. S.* vs. *Union Pacific R. R. Co.*, 11 Blatch., 385, it appeared that under the fourth section of the Act of March 3, 1873, a suit in equity was permitted to be instituted in the name of the United States against the Union Pacific Railroad Company, and others, under certain rules for the conduct of that suit which differed from that which governed ordinary suits. Under the Act of 1873, the power and authority given to the Attorney General were exceptional and limited to the particular cases and matters specified in the Act, as follows: (1) to a suit in favor of the United States against the Union Pacific Railroad Company, and also persons having subscribed for or received the capital stock of said road, not paid for in full in money; (2) a suit against persons who may have received as dividends or otherwise portions of capital stock of the road unlawfully; (3) a suit against persons who

have received as profits of construction contracts money which properly belonged to the railroad company. It was held by Mr. Justice HUNT, with whom Judge SHIPMAN of Connecticut, sat in the case, that for these causes there was no right of action in the United States, and that none could be given by an Act of Congress, on the ground that Congress could not create damages to be recovered by the United States, or cause those to be wrongs to the United States, which in their nature were wrongs to another, and that the United States could not convert to itself the property of another by its own declaration or its own authority, and that it could not maintain an action in its own name against A to recover a debt which he may owe to B.

It is important to notice how similar the Act of 1896 is, in this regard, to the Act of 1873. Under the Act of March 2, 1896, it is provided that the United States can recover from the railroad company money which if it owes to anybody, it owes to the purchasers from it of the lands improperly patented, and as is held in the Union Pacific case, the United States cannot maintain an action to recover a debt which the defendant

owes to another. In the course of the opinion, Mr. Justice HUNT said at page 392, as follows:

> "The United States is the plaintiff in this suit, and the question arises—Is there a right of action in the United States for the causes thus specified, or can a right to recover for such cause of action be given to the United States by an Act of Congress? Congress may well authorize its Attorney General to institute suits to recover damages due to the United States, or to redress wrongs which are legally wrongs to the United States, but its action can scarcely create such damages, or cause acts to be wrongs to the United States which are, in their nature, wrongs to another. The United States cannot convert to itself the property of another, by its own declaration, or its own authority; nor can it maintain an action in its own name, against A., to recover a debt which he may owe to B. Moneys recovered by the United States in such an action, like its other funds, will go into its general treasury, and form a part of its resources, to be disposed of according to law. So, if any individual has committed a breach of trust, or been guilty of fraud in discharging his duties as an agent of the Union Pacific Railroad Company, the cause of action to redress

such wrong and to recover damages therefor, and the damages themselves, when recovered, *belong to the corporation. The suit for* such redress must be in the name of the corporation, as plaintiff. As a general rule, and under ordinary circumstances, no other party can be such plaintiff, and an authority by Congress to the Attorney General to commence such action in the name of the United States is valueless. Congress cannot thus appropriate to itself what belongs to another. To give effect to such an Act would be to deprive one of his property without due process of law. I do not doubt the power of Congress over the remedy to redress alleged injuries—in other words, its power to regulate the conduct of suits, or to prescribe the form of actions. But, it cannot, under the form of regulating the remedy, impair contracts, or dispose of rights of property. It cannot itself adjudge that moneys are due to the United States, and, by such judgment, give authority for their collection."

This decision of Mr. Justice HUNT was affirmed by this Court in *United States* vs. *U. P. R. R. Co.*, 98 U. S., 569, where it was said at page 606:

> "The first suggestion of the legal mind on this inquiry is, that it will not be presumed, unless the language of the statute imperatively requires it, that Congress, by a retrospective law, intended to create new rights in one party to the suit at the expense, or by an invasion of the rights, of other parties; *or, where no right of action founded on past transactions existed, that Congress intended to create it.*"

In the case of *U. S.* vs. *Klein*, 13 Wall., 128, the question arose as to the power of Congress to pass an act providing that pardons should not be considered by this Court on appeal in cases tried in the court of claims. It was held that such an Act was not constitutional, upon the ground that Congress had inadvertently passed the limit which separates the legislative from the judicial power. After explaining the provisions of the Act, the Court went on to say at page 146 as follows:

> "It is evident from this statement that the denial of jurisdiction to this court, as well as to the Court of Claims, is founded solely on the application of a rule of decision, in causes pending, prescribed by Congress. The court has jurisdiction of the

cause to a given point; but when it ascertains that a certain state of things exists, its jurisdiction is to cease and it is required to dismiss the cause for want of jurisdiction.

"It seems to us that this is not an exercise of the acknowledged power of Congress to make exceptions and prescribe regulations to the appellate power.

"The Court is required to ascertain the existence of certain facts and thereupon to declare that its jurisdiction on appeal has ceased, by dismissing the bill. What is this but to prescribe a rule for the decision of a cause in a particular way? In the case before us, the Court of Claims has rendered judgment for the claimant and an appeal has been taken to this court. We are directed to dismiss the appeal, if we find that the judgment must be affirmed, because of a pardon granted to the intestate of the claimants. *Can we do so without allowing one party to the controversy to decide it in his own favor? Can we do so without allowing that the legislature may prescribe rules of decision to the judicial department of the government in cases pending before it?* * * * In the case before us no new circumstances have been created by legislation. But the court is forbidden to give the effect to evi-

dence, which, in its own judgment, such evidence should have, and is directed to give it an effect precisely contrary.

"We must think that Congress has inadvertently passed the limit which separated the legislative from the judicial power.

"It is of vital importance that these powers be kept distinct. The Constitution provides that the judicial power of the United States shall be vested in one Supreme Court and such inferior courts as the Congress shall from time to time ordain and establish. The same instrument, in the last clause of the same article, provides that in all cases other than those of original jurisdiction, 'the Supreme Court shall have appellate jurisdiction both as to law and fact, with such exceptions and under such regulations as the Congress shall make.'"

In the *Sinking Fund Cases*, 99 U. S., 700, it was said by Mr. Justice FIELD, at page 759, as follows:

"When, therefore, the government of the United States entered into the contract with the Central Pacific, it could, no more than a private corporation or a private individual, finally construe and determine the extent of the company's rights and liabilities. If it

had cause of complaint against the company, it could not undertake itself, by legislative decree, to redress the grievance, but was compelled to seek redress as all other civil corporations are compelled through the judicial tribunals. If the company was wasting its property, of which no allegation is made, or impairing the security of the government, the remedy by suit was ample. To declare that one of two contracting parties is entitled under the contract between them to the payment of a greater sum than is admitted to be payable, or to other or greater security than that given, is not a legislative function. It is judicial action; it is the exercise of judicial power,—and all such power, with respect to any transaction arising under the laws of the United States, is vested by the Constitution in the courts of the country.

"In the case of *The Commonwealth v. The Proprietors of New Bedford Bridge*, a corporation of Massachusetts, the Supreme Court of that State, speaking with reference to a contract between the parties, uses this language: 'Each has equal rights and privileges under it, and neither can interpret its terms authoritively so as to control and bind the rights of the other. The

Commonwealth has no more authority to construe the charter than the corporation. By becoming a party to a contract with its citizens, the government divests itself of its sovereignty in respect to the terms and conditions of the contract and its construction and interpretation, and stands in the same position as a private individual. If it were otherwise, the rights of parties contracting with the government would be held at the caprice of the sovereign, and exposed to all the risks arising from the corrupt and ill-judged use of misguided power. The interpretation and construction of contracts when drawn in question belong exclusively to the *judicial* department of the government. The legislature has no more power to construe their own contracts with their citizens than those which individuals make with each other. They can do neither without exercising judicial powers which would be contrary to the elementary principles of our government, as set forth in the Declaration of Rights.' 2 Gray, 350.

"In that case the charter of the corporation authorized the building of a toll-bridge across a navigable river, with two suitable draws at least thirty feet wide. A subse-

quent act required draws to be made of a greater width; but the court held that the question whether the draws already made were suitable, and constructed so as not unreasonably or unnecessarily to obstruct or impede public navigation, was not a question to be determined by the legislature, or by the corporation, but by the courts.

"It was a question which could not be authoritatively determined by either party so as to control and bind the other. 'Like all other matters involving a controversy concerning public duty and private rights,' said the court, 'it is to be adjusted and settled in the regular tribunals, where questions of law and fact are adjudicated on fixed and established principles, and according to the forms and usages best adapted to secure the impartial administration of justice.' In the case at bar, the government by the act of 1878, undertakes to decide authoritatively what the obligations of the Central Pacific are, and in effect declares that if the directors of the company do not respect its construction, and obey its mandates, founded upon such such construction, they shall be subject to fine and imprisonment.

"The distinction between a judicial and a legislative act is well defined. The one de-

termines what the law is, and what the rights of parties are, with reference to transactions already had; the other prescribes what the law shall be in future cases arising under it. Wherever an act undertakes to determine a question of right or obligation, or of property, as the foundation upon which it proceeds, such act is to that extent a judicial one, and not the proper exercise of legislative functions. Thus an act of the legislature of Illinois authorizing the sale of the lands of an intestate, to raise a specific sum, to pay certain parties their claims against the estate of the deceased for moneys advanced and liabilities incurred, was held unconstitutional on the ground that it involved a judicial determination that the estate was indebted to those parties for the moneys advanced and liabilities incurred. The ascertainment of indebtedness from one party to another, and a direction for its payment, the court considered to be judicial acts which could not be performed by the legislature. 3 Scam. 238. So also an act of the legislature of Tennessee authorizing a guardian of infant heirs to sell certain lands of which their ancestor died seized, and directing the proceeds to be applied to the payment of the ancestor's debts, was, on similar grounds, held to be uncon-

stitutional. *Jones v. Perry*, 10 Yerg. (Tenn.) 59. Tested by the principle thus illustrated, the Act of 1878 must be held in many ways to transcend the legislative power of Congress."

In the case of *Medford* vs. *Learned*, 16 Mass., 215, the question was squarely presented as to whether it was constitutional for the legislature to pass a law creating a debt or obligation on a consideration which is past. The facts in the case were that a pauper had been supported by the town of Medford. Afterwards the pauper's fortune improved, and the legislature passed a law giving a town the right to recover from the pauper money expended in his behalf. It was held that such statute was improvidently enacted, and Chief Justice PARKER in delivering the opinion, said at page 216:

"If it be true that this statute, instead of providing a remedy for an existing contract, must be construed to create a debt or obligation, on a consideration which had passed, and which was not of itself a legal foundation for a promise, it would seem very clear that the statute was enacted improvidently, and that it could not have the intended operation. * * * For no legislator could

> have entertained the opinion, that a citizen, free of debt by the laws of the land, could be made a debtor merely by a legislative act, declaring him one."

In *Towle* vs. *R. R. Co.*, 18 N. H., 547, 549, it appeared that in a previous action the court had held that the plaintiff was entitled to recover no compensation for consequential damages sustained by reason of the defendant's construction of a bridge, so that a highway might pass over the defendant's railroad. Subsequently, the legislature passed an act authorizing a recovery of such damages. This statute was held unconstitutional, and the court said:

> "The only question is whether the statute, if so applied, would not be a retrospective law for the decision of a civil cause, and thus fall within the express prohibition of the constitution, being also in violation of the general principle which forbids the legislative department to impose a new duty of liability upon one party for the benefit of another, to whom the first owes no duty, and is under no obligation."

In *Pittsburgh, etc., R. Co.* vs. *Gazzam*, 32 Pa. St., 340, 350, the court said that it was not competent for the legislature to provide that a

promise to subscribe for a specified object was a subscription to the capital stock of a particular company as follows:

> "Is it competent, then, for the legislature, when they find a loose promise adrift, to authorize the plaintiff to seize it and sue upon it? *Can the legislature prescribe what judgment the courts shall or shall not give in a particular case?* We think not. * * * Nor can his [the defendant's] right to judicial protection against an unfounded claim be taken away by legislation."

In *Craft* vs. *Lofinck*, 34 Kan., 365, 376, an act requiring persons who owned real estate in territory which had been detached from a township to aid in paying the bonds of the township was held unconstitutional. The court said:

> "The legislature cannot, by the mere forms of legislation, create a legal demand, where no demand, legal, moral or equitable, existed before. Such is not legislation. It is not the passing of laws. It is not the legitimate action of any tribunal; and it is utterly beyond the power of the legislature. (Sedgwick on Stat. and Const. Law, 2d ed., 160 *et seq.*, and cases there cited; Cooley on Const. Lim., side-pages 369, 370 *et seq.*, and cases there cited.)"

In *Lane* vs. *Doe*, 4 Ills., 238, 241, the legislature passed an act authorizing the sale of so much of the lands belonging to a decedent's estate as should be necessary to raise the sum of $1,008.87, with interest and costs, and donating this sum to be applied to the payment of the claims of two persons against the estate. The court held the act unconstitutional and said:

> "It will be seen, from the synopsis of the act made, that evidence must be presumed to have been received, and facts ascertained by the legislature, before its decision, or it has, without such evidence, arbitrarily assumed the facts to exist; and on such ascertainment, or assumption, a decision is made in the nature of a decree. For the act directs the sale of the lands, and orders the appropriation of its proceeds to the persons on whose application, and for whose benefit, the act was adopted, and adjudges the costs to be paid out of the estate. If this is not the exercise of a power of enquiry into, and a determination of facts, between debtor and creditor, and that, too, *ex parte* and summary in its character, we are at a loss to understand the meaning of terms; nay, that it is adjudging and directing the application of one person's property to another, on a claim of indebtedness, without notice to, or

hearing of, the parties, whose estate is diverted by the act.

"That the exercise of such power is, in its nature, clearly judicial, we think too apparent to need argument to illustrate its truth."

In *Isom* vs. *R. R. Co.*, 36 Miss. 300, 310, 314, an act declaring "that in estimating the damages accruing to the owner of land by the appropriation of it to the construction of a railroad, they shall allow in extinguishment of the claim for damages, the benefits which will result to the owner from the construction of the road through his land" was held void as in conflict with the State Constitution.

The court said:

"The spirit and policy of our institutions, are at war with the doctrine of legislative omnipotence. Ours is a government founded upon an express written compact, reduced to exactitude and certainty, expressive of the sovereign will of the people, fixing the limits and marking the bounds of legislative, executive and judicial powers; our constitutions all originated in a spirit of distrust of governmental power, and from a conviction that, unrestrained, its tendency was to despotism. * * * "

After remarking that the powers of government were by the Constitution divided into three "distinct departments," the court continued:

> "The legislature may not, therefore, exercise powers which in their nature are judicial; or close the courts, or forestall the citizen in his *remedy* therein, by *due course of law*, for injuries to his lands or goods. The right of the legislature or the State, by law, to apply the property of the citizen to the public use, and then to constitute itself the judge in its own case, to determine what is the 'just compensation' it ought to pay therefor; or how much *benefit* it has conferred upon the citizen by thus taking his property without his consent; or to extinguish any part of such 'compensation,' by prospective conjectural advantage; or, *in any manner*, to interfere with the just powers and province of courts and juries in administering right and justice, cannot for a moment be admitted or tolerated under our Constitution. If anything *can be* clear and undeniable, upon principles of natural justice, or constitutional law, it seems that this must be so."

In *Coosa River Steamboat Co.* vs. *Barclay & Henderson*, 30 Ala., 120, 127, the court said:

> "It is not within the power of legislation to create a cause of action out of an existing transaction, for which there was at the time of its occurrence, no remedy.—*Falconer v. Campbell*, 2 McLean, 195; *Austin v. Stephens*, 11 Shep. 520; *Medford v. Learned*, 16 Mass., 215; *Sutherland v. DeLeon*, 1 Texas 250."

In *State* vs. *Hampton*, 13 Nev., 439, the court held unconstitutional an act which attempted to fix the amount due by a city to private claimants, and said:

> "The act in question, in so far as it undertakes to definitely fix the amount due to the several persons therein named, is an attempt upon the part of the legislature to exercise judicial powers, and is repugnant to section 1 of article iii. of the state constitution."

It is, therefore, submitted that under the doctrine of the foregoing authorities, Congress was without power to enact that, because of the sale by the railroad to *bona fide* purchasers of land erroneously patented to it, the railroad should be liable to the United States at the rate of $1.25 for each acre so sold by it, and certainly when such enactment was without regard at all to the fact that the railroad may have received

less than $1.25 per acre for the land; that a statute determining in advance the liability of a litigant is an assumption by Congress of the judicial power which, under the Federal Constitution, is vested alone in the courts; that the effect of such statute is to deprive the railroad company of its property without due process of law, in violation of the Fifth Amendment of the Federal Constitution, and that the construction of the statute so as to create an indebtedness out of past transactions, when no such indebtedness before existed, as in the present case, would make the act unconstitutional.

THIRD POINT.

The judgment below should be reversed.

MAXWELL EVARTS,
Of Counsel for Appellant.

FILE COPY.

Supreme Court of the United States.

OCTOBER TERM, 1905.

No. 141.

Office Supreme Court U. S.
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Clerk.

The Southern Pacific Railroad Company, Homer S. King, Trustee, and Central Trust Company of New York,
Appellants,

vs.

The United States,

APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT.

BRIEF FOR UNITED STATES.

By JOSEPH H. CALL,
Special Assistant to Attorney General.

Parker & Stone Co., Law Printers, 238 New High St., Los Angeles, Cal.

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Supreme Court of the United States.

OCTOBER TERM, 1905.

No. 141.

The Southern Pacific Railroad Company, Homer S. King, Trustee, and Central Trust Company of New York,
Appellants,

vs.

The United States,
Appellee,

BRIEF FOR UNITED STATES.

This bill was filed by the United States against the Southern Pacific Railroad Company, and the trustees in certain mortgages, to secure bonds issued by said company, and against numerous other defendants, (1) to determine the title to about thirty thousand acres of land within the limits of the grant to the Southern Pacific Railroad by the act of March 3, 1871, but which were excepted from such grant by reason of a prior grant to and reservation for the Atlantic and Pacific Railroad Company, act July 27, 1866; (2) to determine

what of such lands have been sold by the Southern Pacific Railroad Company to *bona fide* purchasers; (3) to secure a confirmation of the title to such lands as are in the hands of *bona fide* purchasers, and cancellation of patents of such lands as are still owned by the company; (4) to establish a trust in, and an accounting for the moneys received by the Southern Pacific Railroad Company, for such lands as it has sold to *bona fide* purchasers, to the extent of one dollar and twenty-five cents per acre, in accordance with the provisions of the acts of Congress of March 3, 1887, and March 2, 1896. (See appendix hereto for Acts.)

The Southern Pacific Railroad Company, and the other twenty-two defendants to the bill who claim to be bona fide purchasers, filed answers to the merits and took the testimony in the Circuit Court, without objecting to the jurisdiction in equity. [Record 48, 46, 146, 147, 159, 170, 178.]

The Circuit Court, upon final hearing, entered a decree in favor of the United States for such of the lands as had not been sold to *bona fide* purchasers, confirmed the titles of *bona fide* purchasers, and a decree in favor of the government for the value of the lands sold to *bona fide* purchasers not exceeding the government minimum price of $1.25 per acre. [Record 201-251.]

The Circuit Court filed an opinion in support of the decree. [Record 740-765, reported in 117 Fed. 544.]

The Circuit Court of Appeals for the Ninth Circuit unanimously affirmed the decree of the Circuit Court. [Record 787,808, reported in 133 Fed. 651.]

We do not accept the erroneous statements in appellant's brief as to the scope of this bill of complaint, nor as to the objects and relief sought.

The bill of complaint presents a plain, unvarnished statement of the facts [record 2-20], and such facts are more fully and in detail established and found in the agreed statement of facts [record 256, 281], and in the opinions of the courts below, and in the final decree.

In the courts below counsel for appellants wanted to have the bill "stripped of its verbiage," leaving nothing but a portion of the prayer for relief and to have that part denominated "an action in assumpsit."

The bill was not so "stripped" in the Circuit Court, by any special or general demurrer, nor was any attempt made to so strip it, but on the contrary, the defendants and their able attorneys, recognizing that the bill was based upon equitable grounds, and that the relief sought was equitable in its nature, answered fully to the merits, and the case was thus tried and passed to final decree.

Stripping the bill of parts offensive to counsel for defendants does not relieve the case as presented against their clients, as one appealing strongly to the sympathies of a court of equity and to the conscience of the chancellor.

The story can be told in simple language, for, stripped of offensive verbiage, the case is a plain one of a soulless corporation, while constructing a government railroad for national purposes and uses, with the aid of public land grants, appropriating thirty-odd thousand acres of land *patented to it by mistake,* and

selling those lands or most of them to *bona fide* purchasers, retaining the proceeds and refusing to account for the money received or return the land.

The lands described in the bill of complaint are in the same situation, with respect to the Atlantic and Pacific and Southern Pacific grants, as the lands involved in the prior litigations between the United States and the Southern Pacific Railroad Company, and the Government has alleged and proven an estoppel by judgment against the Southern Pacific Railroad Company and those in privity with it, arising out of the former adjudications. [Record 291, 360, 363, 500, 514, 567; see also 146 U. S., 570, 519 and 168 U. S. 1.]

As to what has been determined in the former suits clearly appears from the decision of the court in Southern Pacific Railroad Company v. United States, 168 U. S. 1-66, followed in the present case.

The bill of complaint contains the following allegation:

> "Your orator further alleges that more than one thousand persons, among whom are the defendants above named, sued as representatives of a class, have purchased by immediate or mesne conveyances from defendant Southern Pacific Railroad Company, certain tracts of land described in said Exhibit "A" to this bill, or some interest therein, and who are too numerous to be made parties to this bill, and that all of said persons claim an interest in such lands so purchased under and by virtue of said grants to defendant Southern Pacific Railroad Company, and said acts of March 3, 1887, February 12, 1896, and March 2, 1896, but the nature and extent of such claims are unknown to your orator, except as heretofore set forth, and your orator has joined as defendants those per-

sons above named as representing such numerous purchasers, and which persons fairly represent said purchasers." [Record 15.]

Answers were filed to the bill of complaint by those named in the bill originally as defendants, and by numerous other persons, who have intervened in the cause as defendants, and filed answers, by stipulation, and by order of court.

Each and all of the answers deny the title of the United States, putting in issue the allegations that the patents were erroneously issued to the lands, and allege that the lands described in the bill were granted to the Southern Pacific Railroad Company by acts of Congress; and further allege that the defendants severally were *bona fide* purchasers from the Southern Pacific Railroad Company of the lands described in the pleadings.

The answer of the Southern Pacific Railroad Company sets forth a table of land sales, showing that the lands described in Exhibit "A" to the bill were sold or contracted to be sold by the railroad company in 213 separate contracts of sale to 213 different purchasers [record 74-141]; and the testimony of Jerome Madden shows that the lands were sold, or contracted to be sold, by the railroad company at the times severally, to the persons, and upon the terms set forth in Exhibit "A" to the answer. [Record 696, 697.]

The answer of the railroad company further alleges that these several persons are purchasers in good faith of the several tracts of lands sold, as shown by said table or exhibit.

It appears from the undisputed facts that of the lands described in Exhibit "A" to the bill, and which are also described in Exhibit "A" to the answer, that about one-half of them were conveyed by the railroad company by deeds, prior to this suit, and that about one-half were sold by executory contracts, which still remain unexecuted.

From this review of facts it appears that the Southern Pacific Railroad Company claims to have an interest in the controversy to the lands sold by deed, as a grantor, and as a party in privity with the purchasers, and claims an interest in the remainder of the lands, by reason of the executory contracts outstanding, by reason of the non-payment of the purchase price, or of a considerable part thereof, and it further appears that each and all of the defendants claim some interest in the lands.

The allegation of the bill that the parties interested in these lands as purchasers are too numerous to all be made parties to the suit, and that those named as defendants sufficiently represent the others, appears to be well sustained by the established facts, and the facts were so found by the Circuit Court.]Record 202.]

The answer of the railroad company, their grantor, is full and complete, and an adjudication upon the title in favor of the railroad company will be for the benefit of its grantees, the purchasers; and in addition to being represented by the railroad company *twenty-two of the purchasers have appeared and answered to the whole case,* and who fairly represent the other purchasers as found by both courts below.

But no appeal has been taken by the other purchasers from the decree which confirmed their titles.

It appears from these answers that all of the defendants claim title under the same acts of Congress making grants to the railroad company, and that they all claim the benefits of the adjustment act of March 3, 1887, as supplemented by the acts of February 12, 1896, and March 2, 1896; and it appears from the testimony of Jerome Madden that all of these purchasers purchased under similar conditions and circumstances.

In addition to the 213 purchasers who are made parties or represented in the cause, it appears from the stipulation of the parties filed May 9, 1900, as follows:

> "That, in fact, many of the persons shown by Exhibit "A" to the defendant's answer to have purchased and received deeds of conveyance from the Southern Pacific Railroad Company for lands patented to that company by the United States, thereafter subdivided such lands and sold and conveyed various subdivisions thereof to persons not made parties to this suit by a statement of their names, and at the time this suit was commenced and now, the individual owners under such conveyances, of lands described in Exhibit "A" to the defendant's answer, were and are very numerous."
>
> [Record 279, 280.]

All of the lands described in the decree, except a few tracts dismissed from the suit, are shown by the stipulated facts in the cause to be within the granted and 20-mile limits of the grant to the Atlantic and Pacific Railroad Company, which was located by maps of definite location, approved in the year 1872, and which grant was forfeited to the United States for its benefit by the act of Congress of July 6, 1886.

It further appears from the admitted facts and from the facts found in the final decree of the Circuit Court, which are not disputed upon this appeal, that all of the lands decreed to the United States or their value by the final decree from which this appeal has been taken, were erroneously patented to the Southern Pacific Railroad Company, as lands inuring to it, under its grant of March 3, 1871, and all of the lands are outside of the 20-mile or place limits of the Southern Pacific grant of July 27, 1866, called the "main line" grant.

See Southern Pac. v. United States, 183 U. S. 519.

Six of the tracts of the numerous lands described in the bill are also within the indemnity limits of the Southern Pacific's main-line grant of 1866, but those tracts have never been selected by the Southern Pacific as indemnity inuring under that grant, but, on the contrary, were selected and patented to it, as lands inuring under its grant of 1871, and the decree of the Circuit Court is that they were erroneously patented under the grant of 1871. [Record 244, 245, subdivision IV.]

These lands could not have been taken under the grant of 1866, called the main-line grant, because they were, at the time they were so patented to the Southern Pacific, granted to the Atlantic and Pacific Railroad, being within the place limits of that grant, and could not have been taken as indemnity by the Southern Pacific.

It has been adjudged by this court, and by the Circuit Court of Appeals, in numerous cases, that none of the lands within the 30-mile limits of the grant to the Atlantic and Pacific Railroad Company, and appertaining to that line of railroad, were granted to or can be taken

by the Southern Pacific Railroad Company, *under its grant of 1871;* and that the lands granted to the Atlantic and Pacific Railroad were forfeited solely for the benefit of the United States and not for the Southern Pacific.

United States v. Southern Pacific Railroad Company, 146 U. S. 570, 619;

Southern Pacific Railroad v. United States, 168 U. S. 1;

Southern Pacific Railroad v. United States, 183, U. S. 519;

Southern Pacific Railroad v. United States, 189 U. S 447.

It is contended, on behalf of the Government, upon the allegations of the bill, the admissions of the answers, the stipulations of the parties, and facts otherwise established, that the Government is entitled to a decree for the relief sought by it and granted by the courts below.

The lands embraced in the present bill were formerly involved in a case brought by the United States against the Southern Pacific Railroad, in the Circuit Court for the Southern District of California, numbered 600, to vacate patents to such lands, and as the bill alleges in the present case, those lands were dismissed from the former suit "*without prejudice*" [record 16], and it is so stipulated [record 706, 707].

The reason why they were thus dismissed without prejudice was because it appeared that the whole or a part of such lands had been sold by the Southern Pacific Railroad Company, and it was contended in the answer filed by that company that such lands had passed into the hands of *bona fide* purchasers, who were not par-

ties to that cause, and were not before the court, and therefore no decree could be entered as to such lands, which would affect such absent parties.

Thereupon the lands were dismissed from the suit without prejudice, and the present bill was filed bringing in such purchasers, or sufficient of them to fairly represent the whole, and praying for an accounting from the railroad for the value of the lands so sold and in the hands of such *bona fide* purchasers

The two suits were not similar in their objects, and if they were, it would be wholly immaterial to the determination of the present case, because the dismissal was made without prejudice.

POINTS AND AUTHORITIES.

FIRST.

The right of the defendants to object to the jurisdiction in equity has been waived.

The defendants answered to the merits without demurrer or plea to the jurisdiction in equity, and have put the Government to the expense of taking of testimony, and the cause has been submitted and tried upon the merits.

Under these circumstances the defendants have waived any right to object to the final determination in this cause, as one in equity, the court having power to grant the relief sought.

Brown v. Lake Superior Co., 134 U. S. 530, 535, 536;

Insley v. United States, 150 U. S. 512, 515, 516;

Perrego v. Dodge, 163 U. S. 160, 164;
Kilbourn v. Sunderland, 130, U. S. 505, 514.

SECOND.

This bill is cognizable in equity as one to relieve against a mistake and error in issuing patents to defendant for lands not granted by the act of Congress, and to establish a trust against and accounting for the proceeds of sales of such lands, they or most of them having been sold to bona fide purchasers. Equity not only takes jurisdiction but will grant the relief sought.

(1) The bill alleges and the case shows that these lands were excepted from the grant to the defendant railroad by the terms of the acts of Congress of March 3, 1871, and July 27, 1866, they having been granted to and set apart for the Atlantic and Pacific Railroad Company, but were erroneously patented to the Southern Pacific.

United States v. Southern Pacific Railroad, 146 U. S. 570, 619;
Southern Pacific Railroad v. United States, 168 U. S. 1.

The right of the United States to vacate and annul patents erroneously issued by the Land Department by bill in equity, is sustained by an unbroken line of authority.

United States v. Stone, 2 Wall. 525, 535;
United States v. Minor, 114 U. S. 233;
Mullan v. United States, 118 U. S. 271;

United States v. Bell, &c. Company, 128 U. S. 315, 362;

Colorado &c. Co. v. United States, 123 U. S. 307, 313;

United States v. Southern Pacific R. R., 146 U. S. 570, 619;

Wisconsin Railroad v. United States, 164 U. S. 190, 211;

Germania Iron Co. v. United States, 165 U. S., 379, 383.

The jurisdiction in such cases is maintained in equity as arising in fraud, accident or mistake.

Whether the mistake is of law or of fact is of no consequence in cases of this character, for the reason that the officers of the Interior Department, who exercise ministerial powers, cannot bind the United States by their unauthorized acts.

In Mullan v. United States, 118 U. S., at page 278, the court holding that patents erroneously issued could be vacated by a bill in equity, said:

> "It is no doubt true that the actual character of the lands was as well known at the Department of the Interior, as it was anywhere else, and that the Secretary approved the lists, not because he was mistaken about the facts, but because he was of opinion that coal lands were not mineral lands within the meaning of the act of 1853, and that they were open to selection by the state, but this does not alter the case. The list was certified without authority of law, and therefore by a mistake against which relief in equity may be afforded."

In Wisconsin Central Railroad v. United States, 164 U. S., at page 209, the court quoted the above extract

from the Mullan case, with approval, and reasserted the principle. See also:

Story's Eq. Jur., Sec. 134.

Indeed, in every case which has been brought by the United States to vacate patents to lands which were excepted from the operation of a grant by Congress to a railroad or other person, the suit has been founded and maintained because of error of law in the officers of the Interior Department.

(2) The patents to these lands were issued to the Southern Pacific Railroad Company erroneously and under a mistake by the officers of the Interior Department. The railroad company has sold most of them to *bona fide* purchasers, and by reason of the acts of the defendant railroad company the lands cannot be recovered by the United States, but these acts of the defendant do not defeat the power of a court of equity to grant relief, nor do they relieve the defendant from its trusteeship and liability to make restitution to the government.

One of the objects of this suit is to determine the title to the lands as between the United States and the defendants, claiming to be *bona fide* purchasers from the Southern Pacific Railroad Company.

The act of Congress of March 2, 1896, relating to the adjustment of railroad land grants, (see appendix), expressly authorizes in section 3 any person claiming to be a *bona fide* purchaser from a railroad company, of lands erroneously patented to the company and sold by it, to maintain a suit in the United States courts against the United States to secure a confirmation of his title.

The United States also has a right to maintain a bill in equity to quiet and determine title to lands claimed adversely to the government.

The Statutes of California, Code of Civil Procedure, Section 738, authorizes suits in equity to quiet and determine title to lands.

Pennie v. Hildredth, 81 Cal. 127, 130;
Pierce v. Felter, 53 Cal. 18.

It is well settled that the federal courts will administer such relief in equity where authorized by state statute.

Reynolds v. Crawfordsville, 112 U. S. 405, 412;
Chapman v. Brewer, 114 U. S. 158, 170, 171;
More v. Steinbach, 127 U. S. 70, 84;
Hammer v. Garfield, 130 U. S. 291, 295.

THIRD.

This bill is cognizable in equity as one brought to avoid multiplicity of suits.

The numerous parties defendant in this cause might each independently and separately have maintained an action against the United States to determine title to the lands described in the bill and claimed by such defendant. Such a proceeding is authorized by the act of Congress of March 2, 1896, and but for this bill presenting the entire matter in a single suit, it may fairly be presumed that such numerous independent proceedings would have been brought. This suit in equity is

therefore maintainable as one to avoid multiplicity, the defendants all claiming under the same title.

Pomeroy's Eq. Jur., 255, 256, 269;
Brown v. Guarantee Trust Co., 128 U. S. 403, 410;
Ogden v. Armstrong, 168 U. S. 224, 237;
Smyth v. Ames, 169 U. S. 466;
Hayden v. Thompson (8 C. C. A.), 71 Fed. 60, 67;
Kelley v. Boettcher (8 C. C. A.), 85 Fed. 55, 64;
Barcus v. Gates (4 C. C. A.), 89 Fed. 783, 791;
Bailey v. Tillinghast, 99 Fed. 801 (C. C. A.);
Whitehead v. Sweet, 126 Cal. 67, 75, 76;
Southern Pacific Company v. Robinson, 132 Cal. 408.

It appears, by all the authorities, including the above, that it is not necessary that the defendants should have a common or joint interest in the subject matter of the suit, but they may be joined in a single suit, to avoid multiplicity, when there is a question of fact or of law common to all.

In the present suit the defendants all claim title under the act of Congress of March 3, 1871, and they all claim to be *bona fide* purchasers under similar facts, and under the provisions of the acts of Congress of March 3, 1887, and March 2, 1896.

Not only are the questions of law common to all of the defendants, but the questions of fact are similar in each case; and, moreover, the defendants all claim under the Southern Pacific Railroad Company, a common source of title.

It is, therefore, submitted that this case is cognizable

in equity to avoid multiplicity of suits, if for no other reason, and if upon no other grounds.

(2) Where it is impracticable to make all the persons who are interested parties defendant, the court may proceed to a final decree, where such persons are sufficiently represented by others.

As shown by the evidence, the 213 purchasers have subdivided the lands sold to them, in numerous instances, and the present claimants of the lands so subdivided are very numerous and it is so stipulated.

It is obvious that it would be impracticable to bring all these persons before the court, who must be several hundred, in addition to the 213 original purchasers.

The defendants before the court fairly represent a class of purchasers claiming protection under the acts of 1887 and 1896, and the courts below so found, and in such a case the court may proceed to a final decree.

Equity Rules, 48;

Story's Eq. Pl., secs. 95, 97;

Davis v. Gray, 16 Wall. 203, at pp. 232, 233.

FOURTH.

Special jurisdiction in equity has been conferred by Congress upon the Circuit Court to confirm titles of bona fide purchasers and render judgment against the railroad company for value of lands.

The act of Congress of March 2, 1896, specially provides that if the court shall find that lands erroneously patented have been sold to *bona fide* purchasers, and such purchasers are before the court, that it shall confirm the

title of the purchasers and render judgment in favor of the government for the value of the land, not exceeding the ordinary government price.

This is a constitutional exercise of power by Congress and creates an additional and new ground of equity which may be administered.

Holland v. Challen, 110 U. S. 15;
Arndt v. Griggs, 134, U. S. 316, 320;
Bardon v. Land Co., 157 U. S. 327, 330;
Cowley v. Railroad Co., 159 U. S. 569, 583;

FIFTH.

It is a well settled principle in equity that where land or other property has been transferred from one to another wrongfully or under a mistake, that the court will establish and construct a trust in the property, and in its proceeds, in favor of the beneficiary, and against the person wrongfully holding it, and will require the trustee to return the property or its value.

In the present case the lands were excepted from the Southern Pacific grant. The railroad company had no right to them, and that fact was known to the company as matter of law.

It was not within the *intention* of the United States to convey them to the defendant, and that intent is shown by the granting act.

The defendant is therefore bound in equity to reconvey the lands to the United States if still within its

power to do so, and if not, then to pay to the United States what it received for them, or their reasonable value. This duty is required as a matter of justice, and its enforcement is decreed by an unbroken line of authority:

Chapman v. Douglas County, 107 U. S. 348, 360;
Perry on Trusts, Sec. 186;
Story's Eq. Jur., Secs. 134, 1261, 1263;
Pomeroy's Equity Jurisp., Secs. 155, 156, 1044;
May v. Le Claire, 11 Wall. 217, 236;
Cook v. Tullis, 18 Wall. 332; 341, 342;
Angle v. Chicago Rd,. 151 U. S. 1, 26, 27;
Townsend v. Vanderwerker, 160 U. S. 171, 179;
New Orleans v. Warner, 175 U. S. 120, 129;
Clews v. Jamieson, 182 U. S. 461, 479.

In Chapman v. Douglas County, 107 U. S. 348, 360, quoting from Hill on Trustees, 144, the court said:

> "That whenever the circumstances of a transaction are such that the person who takes the legal estate in property cannot also enjoy the beneficial interest without necessarily violating some established principle of equity, the court will immediately raise a constructive trust and fasten it upon the conscience of the legal owner so as to convert him into a trustee for the parties who in equity are entitled to beneficial enjoyment."

In that case certain property had been conveyed to Douglas County, under a mistake arising out of a misinterpretation of a state statute, and this court, by its decision and mandate, required Douglas County to reconvey the land, or pay over a money compensation in lieu of the land, within a time fixed in the decree.

The provisions of the California Statutes are in full harmony with the general principles of equity governing such transactions.

It is provided in Civil Code of California, Sections 2224, 2229 and 2237, as follows:

> "Sec. 2224. One who gains a thing by fraud, accident, mistake, undue influence, the violation of a trust, or other wrongful act, is, unless he has some other and better right therto, an involuntary trustee of the thing gained, for the benefit of the person who would otherwise have had it.
>
> "Sec. 2229. A trustee may not use or deal with the trust property for his own profit, or for any other purpose unconnected with the trust, in any manner.
>
> "Sec. 2237. A trustee who uses or disposes of the trust property, contrary to section 2229, may, at the option of the beneficiary, be required to account for all profits so made, or to pay the value of its use, and, if he has disposed thereof, to replace it, with its fruits, or to account for its proceeds, with interest."

In Taylor v. Benham, 5 How. 233 at page 274, where a trustee had disposed of trust property, the court said:

> "So, every person who receives money to be paid to another, or to be applied to a particular purpose, to which he does not apply it, is a trustee, and may be sued either at law, for money had and received, or in equity, as a trustee, for a breach of trust." Kane v. Bloodgood, 7 Johns. Ch. Rep. 110; Scott v. Surman, Willes 404; Shakeshaft's case, 3 Bro. Ch. Cas. 198.
>
> "He is liable, then, first, on the ground that the *cestui que* trusts might confirm the sale and resort to the proceeds, as they finally did in this case. Story's Eq. Jurisp. Sec. 1262; 2 Johns. Ch. R. 442; 1 *ibid.* 581."

See also Story's Eq. Pl., Sec. 221.

In Perry on Trusts, section 186, it is said:

> "If a deed is drawn by accident or mistake to embrace property not intended by the parties, equity will construe the grantee to be a trustee and will execute the trust by reforming the deed, or by ordering a re-conveyance. It would be against natural right to allow a person to hold property which he never intended to buy, and which has come to him by such mistake."

In Pomeroy's Equity Jurisprudence, it is said at Sections 155 and 1044:

> "Section 155. The second great division of trusts, and the one which in this country especially affords the widest field for the jurisdiction of equity in granting its special remedies so superior to mere recoveries of damages, embraces those which arise by operation of law from the deeds, wills, contracts, acts or conduct of parties, without any *express* intention, and often without *any* intention, but always without any words of declaration or creation. They are of two species, 'resulting' and 'constructive,' which latter are sometimes called trusts *ex maleficio;* and both these species are properly described by the generic term 'implied trusts.' * *
>
> "If one party obtains the legal title to property not only by fraud or by violation of confidence or of fiduciary relations, but in any other unconscientious manner, so that he cannot equitably retain the property which really belongs to another, equity carries out its theory of a double ownership, equitable and legal, by impressing a constructive trust upon the property in favor of the one who is in good conscience entitled to it, and who is considered in equity as the beneficial owner." * * *
>
> "Section 1044. Constructive trusts include all those instances in which a trust is raised by the doctrines of equity for the purpose of working out justice in the most efficient manner, where there is no intention of the parties to create such a relation, and

in most cases contrary to the intention of the one holding the legal title, and where there is no express or implied written or verbal declaration of the trust. They arise when the legal title to property is obtained by a person in violation, express or implied, of some duty owed to the one who is equitably entitled, and when the property thus obtained is held in hostility to his beneficial rights of ownership. As the trusts of this class are imposed by equity, contrary to the trustee's intention and will, upon property in his hands, they are often termed *trusts in invitum;* and this phrase furnishes a criterion generally accurate and sufficient for determining what trusts are truly 'constructive.'"

When once the property has been acquired by mistake and under circumstances in which a court of equity for purposes of justice decrees the existence of a trust, such trust follows the proceeds derived from such property in whatsoever form received.

The beneficiary is not bound by the acts of the trustee, but has an option to recover the property if not transferred, or if sold to *bona fide* purchasers to confirm the sale, and seize upon the proceeds.

Story's Eq. Pl., Sec. 221.

The principle is stated in Story's Equity Jurisprudence, at Section 1262, as follows:

"In cases of this sort, the *cestui que trust* (the beneficiary) is not at all bound by the act of the other party. He has therefore an option to insist upon taking the property; or he may disclaim any title thereto, and proceed upon any other remedies, to which he is entitled, either *in rem* or *in personam*. The substituted fund is only liable to his option. But he cannot insist upon opposite and repugnant rights. Thus, for example, if a trustee

of land has sold the land, in violation of his trust, the beneficiary cannot insist upon having the land, and also the notes given for the purchase money; for, by taking the latter, at least, so far as it respects the purchaser, he must be deemed to affirm the sale. On the other hand, by following his title in the land, he repudiates the sale."

In May v. LeClaire, 11 Wall, at pages 236 and 237, the court said:

"There are kindred principles in equity jurisprudence whence, indeed, these rules of the common law seem to have been derived. Where a trustee has abused his trust in the same manner the *cestui que trust* has the option to take the original or the substituted property; and if either has passed into the hands of a *bona fide* purchaser without notice, then its value in money. If the trust property comes back into the hands of the trustee, that fact does not affect the rights of *cestui que trust*. The cardinal principle is that the wrong-doer shall derive no benefit from his wrong. The entire profits belong to the *cestui que trust*, and equity will so mould and apply the remedy as to give them to him.

* * * * * * * * * * * * *

"In this case more than half the residuary devisees of Antoine LeClaire are not before us. We cannot, therefore, decree the conveyance of real estate, but his legal representatives are before us, and we can give a money decree against them, embracing the value of the land, which we might otherwise adjudge to be conveyed."

* * * * * * * * * * * * *

"All those securities, including the collaterals, belonged in equity to May from the time they were deposited with Cook & Sargent. LeClaire had no right to change their form or to dispose of them, as was done in carrying out the compromise agreement. It is within the power of this court, in the exercise of its equitable jurisdiction, to annul that arrangement, and hold Davenport and LeClaire's

estate liable in all respects as if the compromise had not been made. *But it is also in our power to confirm the transaction, and upon the principles of constructive trusts, to give May its fruits instead of pursuing the effects themselves. This, as the case is presented in the record, we deem the proper course.*"

In Cook v. Tullis, 18 Wall. at page 342, the court said:

"that property acquired by a wrongful appropriation of other property covered by a trust, is itself subject to the same trust. It cannot alter the case that the newly acquired property, instead of being purchased with the proceeds of the original property, is obtained by a direct exchange for it. The real question in both cases is, what has taken the place of the property in its original form?"

In Clews v. Jamieson, 182 U. S. at pages 479, 480, the court said:

"Pomeroy in his work on Equity Jurisprudence, second edition, instances among other equitable estates and interests which come within the jurisdiction of a court of equity, those of trusts. In volume 1, at section 151, he says: 'The whole system fell within the exclusive jurisdiction of chancery; the doctrine of trusts became and continues to be the most efficient instrument in the hands of a chancellor for maintaining justice, good faith, and good conscience; and it has been extended so as to embrace not only lands, but chattels, funds of every kind, things in action, and moneys.'

"All possible trusts, whether express or implied, are within the jurisdiction of the chancellor. In this case the committee, as trustee, was charged with the performance of some active and substantial duty in respect to the management and payment of the funds in its hands, and it was its duty to see that the objects of its creation were properly accomplished. The fact that the relief demanded is a

recovery of money only, is not important in deciding the question as to the jurisdiction of equity. The remedies which such a court may give 'depend upon the nature and object of the trust; sometimes they are specific in their character, and of a kind which the law courts cannot administer, but often they are of the same general kind as those obtained in legal actions, being mere recoveries of money. A court of equity will always, by its decree, declare the rights, interest or estate of the *cestui que trust,* and will compel the trustee to do all the specific acts required of him by the terms of the trust. It often happens that the *final* relief to be obtained by the *cestui que trust* consists in the recovery of money. This remedy the courts of equity will always decree when necessary, whether it is confined to the payment of a single specific sum, or involves an accounting by the trustee for all that he has done in pursuance of the trust, and a distribution of the trust moneys among all the beneficiaries who are entitled to share therein.' I Pom. Eq. Jur. Sec. 158."

SIXTH.

This bill is maintainable in equity as one for an accounting and for discovery.

The bill of complaint alleges that numerous tracts of land described in Exhibits A and B to the bill, and containing some 30,000 acres, had been erroneously patented to, and that 16,000 in Exhibit B were sold by, the railroad company to numerous persons, they being purchasers in good faith, which lands were excepted from the grant to the Southern Pacific Railroad Company, and the title of which purchasers was confirmed to them by the acts of Congress of 1887 and 1896.

The bill further requires certain interrogatories to be answered by the defendant railroad under oath, setting forth the sales and dates of sales of said lands, names of purchasers, dates of transfers, form of contract, agreed purchase price, date and amount of each payment of principal and of interest, and other matters [record 38, 39].

The answer of the defendant railroad makes full discovery of the amount and description of lands patented and sold, and the amount received by the company.

The answer of the Southern Pacific shows that of the lands described in the bill there have been 213 separate sales made by the defendant of various bodies of land, to 213 persons, for different amounts and upon different dates, and shows that there is great complexity in determining the amounts received by the railroad, the terms of the contracts of sale, dates of payments, amounts due the government, and *bona fides* of the purchasers, and that such sales were made to different persons at different prices and upon various dates, during a period of fourteen years, and that such sales were made upon contracts, each calling for five different payments during a course of five different years upon each sale.

It is not difficult to see, in the light of the authorities, that the complexity existing concerning these accounts through such a long period of years is such as to give a court of equity jurisdiction for an accounting and for discovery, under the well-settled principles appertaining to equity jurisprudence.

Although the account is very complex, and for that reason is maintainable in equity, the pleadings also show that the accounts are mutual, because under the statute of 1896 there is credit given to the railroad company upon each sale, (1) of all amounts in excess of $1.25 per acre, and (2), in cases where sales have been made at less than $1.25 per acre there is a credit given for the difference between the amount received by the railroad company and the price of $1.25 per acre.

So that the account upon one side is the amounts received by the railroad company in the vast number of sales which it has made, and upon the numerous dates mentioned and numerous payments made, and on the other side are the credits given by the acts of Congress.

The jurisdiction of courts of equity in matters of account and discovery are stated in Story's Equity Jurisprudence, sections 441, 442, 443 and 456, as follows:

ACCOUNT.

"441. Having disposed of these three great heads of concurrent equitable jurisdiction in matters of accident, mistake, and fraud, the undisputed possession of which has belonged to courts of equity from the earliest period which can be traced out in our juridical annals, we may now pass to others of a different and less extensive character. We allude to the heads where the jurisdiction, although it may attach upon any or all of the grounds above mentioned, is not necessarily dependent upon them, and, in fact, is exercised in a variety of cases where they do not apply, upon another distinct ground, namely, that the subject-matter is, *per se*, within the scope of equitable jurisdiction. Among these are matters of *account*.

* * * * * * * * * * * * * *

"442. Let us begin with matters of ACCOUNT. One of the most ancient forms of action at the common law is the action of account. But the modes of proceeding in that action, although aided from time to time by statutable provisions, were found so very dilatory, inconvenient and unsatisfactory that as soon as courts of equity began to assume jurisdiction in matters of account, as they did at a very early period, the remedy at law began to decline; and, although some efforts have been made in modern times to resuscitate it, it has in England fallen into almost total disuse.

* * * * * * * * * * * * * *

"443. The difficulties in the modes of proceeding in actions of account, and the convenience of the modes of proceeding in suits in equity, to attain the ends of substantial justice, are stated in an elementary work of solid reputation, with great clearness and force. The language of the learned author is as follows: 'The proceedings in this action being difficult, dilatory and expensive, it is now seldom used, especially if the party have other remedy, as debt, covenant, case; or if the demand be of consequence, and the matter of an intricate nature; for, in such case, it is more advisable to resort to a court of equity, where matters of account are more commodiously adjusted, and determined more advantageously for both parties; the plaintiff being entitled to a discovery of books, papers and the defendant's oath; and, on the other hand, the defendant being allowed to discount the sums paid or expended by him; to discharge himself of sums under forty shillings by his own oath; and if by answer or other writing he charges himself, by the same to discharge himself, which will be good, if there be no other evidence.'"

* * * * * * * * * * * * * *

DISCOVERY.

"456. The doctrine now generally (perhaps not universally) held in America, is (as we have seen), that in all cases where a court of equity has jurisdiction for discovery, and the discovery is effectual, that becomes a sufficient foundation upon which the court may proceed to grant full relief. In other words, where the court has legitimately acquired jurisdiction over the cause for the purpose of discovery, it will, to prevent multiplicity of suits, entertain the suit also for relief."

In Pomeroy's Equity Jurisprudence, sections 1420, 1421, the principles are stated as follows:

ACCOUNT AND DISCOVERY.

"1420. ORIGIN OF THE EQUITABLE JURISDICTION.—The action of account-render was one of the most ancient actions known to the common law. From the narrow scope and technical rules of this action, the inability of common-law courts to obtain a discovery from the defendant on his oath, the difficulty met with in cases of mutual and complicated accounts, and the impossibility of otherwise doing complete justice, it is easy to understand why the action of account-render fell into disuse, and a jurisdiction in equity to entertain suits for an accounting grew up."

* * * * * * * * * * * * * *

"1421. EXTENT OF THE EQUITABLE JURISDICTION.—WHEN EXERCISED.—The instances in which the legal remedies are held to be inadequate and therefore a suit in equity for an accounting proper, are: 1. Where there are mutual accounts between the plaintiff and the defendant; that is, where each of the two parties has received and paid on account of the other. 2. Where the accounts are all on one side, but there are circum-

stances of great complication, or difficulties in the way of adequate relief at law; 3. Where a fiduciary relation exists between the parties, and a duty rests upon the defendant to render an account. A plea of stated account obviously constitutes a bar to a suit in equity for an accounting, since in that case the remedy at law is entirely adequate; but of course a stated account may be opened for fraud or error. The remedy of accounting is in most instances a necessary incident and part of the relief granted in suits brought by those beneficially interested, against trustees, either express or implied, and persons standing in fiduciary relations, such as administrators, executors, guardians, directors, and the like."

In Kirby v. Lake Shore Railroad, 120 U. S. 130, 134, 138, the court said:

"The case made by the plaintiff is clearly one of which a court of equity may take cognizance. *The complicated nature of the accounts between the parties constitutes itself a sufficient ground for going into equity.* It would have been difficult, if not impossible, for a jury to unravel the numerous transactions involved in the settlements between the parties, and reach a satisfactory conclusion as to the amount of drawbacks to which Alexander & Co. were entitled on each settlement. 1 Story Eq. Juris. Sec. 451. Justice could not be done except by employing the methods of investigation peculiar to courts of equity."

* * * * * * * * * * * * *

"The equity jurisdiction of the courts of the United States is the same that the High Court of Chancery in England possesses, is subject to neither limitation or restraint by state legislation, and is uniform throughout the different states of the Union."

In Colonial Mortgage Co. v. Hutchinson Mortgage Company, 44 Fed. 219, 221, Judge Shiras said:

> "it is clear that the complainant has the right to call the defendant corporation to an account for the manner in which it has performed, or failed to perform, the trust confided to it; and, as it is apparent that such accounting involves many and complex questions including the disposition to be made of the mortgages tendered back to the defendant, the expenses connected therewith, the sums received as interest thereon, and the compensation, if any, due to the defendant, it follows that not only by reason of the right of complainant to call for a settlement of the trust but *also by reason of the complexity of the account to be settled, and the disposition to be made of the mortgages in question, there exists grounds for the exercise of equitable jurisdiction.*"

The jurisdiction of courts of equity in matters of *account* is well settled, especially where discovery is sought, and always where discovery is made.

Kilbourne v. Sunderland, 130 U. S., 514, 515.

United States v. Old Settlers, 148 U. S., 427, 465.

Fowle v. Lawrason, 5 Pet. 495.

Magic & Co. v. Elm, 14 Blatch., 114.

Kelley v. Boettcher, 85 Fed. 55, C. C. A.

Gas Co. v. Indianapolis, 90 Fed. 196.

McMullen v. Strother, 136 Fed. 295, C. C. A.

The numerous authorities, upon equity jurisprudence, clearly show that the rules governing the jurisdiction in the United States and, in England, are identical, and that jurisdiction is established (1) when the accounts are mutual, (2) when the accounts are not mutual but involve complexity, and (3) where there is neither mutuality in the accounts nor complexity, but a discovery is sought and obtained.

Upon each and all of these grounds the present suit is maintainable in equity.

SEVENTH.

The jurisdiction in equity in this case is sustained because the final relief sought and the mode of obtaining it is more efficient than in a court of law.

Oelrichs v. Spain, 15 Wall. 211, 228;
Kilbourn v. Sunderland, 130 U. S. 505, 514, 515;
Joy v. St. Louis, 138 U. S. 1, 11, 50;
United States v. Old Settlers, 148 U. S. 427, 465;
United States v. Union Pacific Railroad, 160 U. S. 1, 51, 52;
Chicago Railroad v. Union Pacific Railroad, 47 Fed. 15, 26;
United States v. Union Pacific Railroad, 50 Fed. 28, 43.

In view of the complications existing in this case, it is obvious that a jury could be of no possible aid to the court, but, on the contrary, would be an impediment to the speedy determination of this cause, and therefore the final relief and mode of obtaining it is more efficient than at law.

This court is called upon to determine (1) the rights of the respective parties under the acts of Congress of July 27, 1866, and March 3, 1871, granting lands to the defendant railroad, and construe those acts which statutes are not only laws, but contracts; (2) to determine the rights of the respective parties under the act of

Congress of July 6, 1886, forfeiting and restoring to the public domain the lands and rights to lands granted to the Atlantic and Pacific Railroad, and interpret that act; (3) to determine the rights of the respective parties under, and construe the acts of Congress of March 3, 1887, February 12, 1896, and March 2, 1896, protecting the rights of *bona fide* purchasers of the railroad of lands erroneously patented, and providing for re-payment to the United States of the value of the lands, not exceeding the minimum government price or amount received by the railroad; (4) to determine the effect as *res adjudicata* of the decisions and decrees of the Supreme Court of the United States in the former litigations between the United States and the Southern Pacific Railroad Company, reported in 146 U. S. 570, 615, 619, and 168 U. S. 1, 66; (5) to determine the effect as an estoppel upon the claims of the Southern Pacific Railroad Company, in virtue of the former litigations and answers filed by it alleging that these lands had been sold to *bona fide* purchasers and otherwise seeking by such answers to protect such purchasers; (6) the construction and effect of the deeds and contracts of sale executed by the Southern Pacific Railroad to very numerous persons; (7) to determine whether an equitable trust does not exist in favor of the government and against the railroad for the government value of the lands which the railroad company has received from sales to *bona fide* purchasers, and whether the acts of Congress above mentioned do not, in effect, provide for an apportionment or division of such fund to the extent of giving the government the minimum government price

out of such proceeds of sales; (8) an accounting embracing a period of real estate transactions during a period of fourteen years, covering more than 213 separate sales of lands of which each sale usually covers numerous tracts, and embracing something over 1000 different payments made by the respective purchasers; and finally, the enforcement by this court of contracts and equitable obligations by a corporation created by the United States for governmental functions in pursuance of acts of Congress under and by virtue of which mutual duties and obligations were required.

In support of the principle here contended for, the following extracts from the authorities are made:

In Oelrichs v. Spain, 15 Wall., at page 228, the court said:

> "The 16th section of the Judiciary Act of 1789 provides, 'that suits in equity shall not be sustained in any case where plain, adequate and complete remedy can be had at law,' but this is merely declaratory of the pre-existing rule, and does not apply where the remedy is not 'plain, adequate, and complete;' or, in other words, 'where it is not as practical and efficient to the ends of justice and to its prompt administration, as the remedy in equity.'"

In Kilbourn v. Sunderland, 130 U. S., at pages 514 and 515, which was a suit for an accounting, the court said:

> "The point is also pressed that the remedy at law was plain, adequate and complete, and jurisdiction in equity therefore wanting."
>
> * * * * * * * * * * * * *
>
> "The jurisdiction in equity attaches unless the legal remedy, both in respect to the final relief *and the mode of obtaining it,* is as efficient as the rem-

edy which equity would confer under the same circumstances."

* * * * * * * * * * * * * *

"'There cannot be any real doubt that the remedy in equity, *in cases of account*, is generally more complete and adequate than it is or can be at law.' 1 Story's Eq. Jur. Sec. 450; and as the remedy at law in the case in hand was rendered embarrassed and doubtful by the conduct of the defendants, and fraud has in equity a more extensive signification than at law, and, as charged here, involved the consideration of the principles applicable to fiduciary and trust relations between the parties throughout the period of their connection, we concur with the Supreme Court of the District in sustaining the jurisdiction."

In Joy v. St. Louis, 138 U. S. at page 50, the court said:

"Railroads are common carriers and owe duties to the public. The rights of the public in respect to these great highways of communication should be fostered by the courts; and it is one of the most useful functions of a court of equity that its methods of procedure are capable of being made such as to accommodate themselves to the development of the interests of the public, in the progress of trade and traffic, by new methods of intercourse and transportation."

In United States v. Old Settlers, 148 U. S. 427, 465, the court sustained the jurisdiction in equity in that cause, as one arising upon *account*, and without any other complications or grounds of equity, and the court said, at page 465:

"The remedy in equity, *in cases of account*, is generally more complete and adequate than it is or can be at law; 1 Story Eq. Jur. Sec. 450; Kilbourn v. Sunderland, 130 U. S. 505; and we regard the lan-

guage of the act of Congress as manifestly used with the intention that equity powers should be exercised in the disposition of the case. It was upon this view that we directed the *certiorari* to issue, and in arriving at our conclusions, while we have had the advantage of the findings of the Court of Claims we have considered and determined the case for ourselves upon an examination of the entire evidence."

In United States v. Union Pacific Railway, 160 U. S. at pages 51, 52, the court said:

"In Boyce v. Grundy, 3 Pet. 210, 215, this court said: 'It is not enough that there is a remedy at law; it must be plain and adequate, or, in other words, as practical and efficient to the ends of justice and its prompt administration as the remedy in equity.' The circumstances of each case must determine the application of the rule. Watson v. Sutherland, 5 Wall. 74, 79. In Oelrichs v. Spain, 15 Wall. 211, 228, an objection was raised that the remedy at law was ample. The court observing that the remedy at law was not as effectual as in equity, said, among other things, that a 'direct proceeding in equity will save time, expense, and a multiplicity of suits, and settle finally the rights of all concerned in one litigation.'"

* * * * * * * * * * * * *

"These principles are abundantly sustained by the authorities. In 1 Pomeroy's Equity Jurisprudence, Sec. 181, many adjudged cases are cited in support of the proposition that, 'if the controversy contains any equitable feature, or requires any *purely equitable relief* which would belong to the *exclusive* jurisdiction, or involves any matter pertaining to the *concurrent jurisdiction*, by means of which a court of equity would acquire, as it were, a partial cognizance of it, the court may go on to a complete adjudication, and may thus establish purely legal rights, and grant legal remedies which

would otherwise be beyond the scope of its authority.'"

In Chicago Railroad v. Union Pacific Railway, 47 Fed., at page 26, Justice Brewer said:

> "I believe most thoroughly that the powers of *a court of equity* are as vast and its processes and procedure as elastic as all the changing emergencies of increasingly complex business relations and the protection of rights can demand."
>
> * * * * * * * * * * * * * *
>
> "They are potent to protect the humblest individual from the oppression of the mightiest corporation; to protect every corporation from the destroying greed of the public; to stop state or nation from spoilating or destroying private rights; to grasp with strong hand every corporation, and compel it to perform its contracts of every nature and do justice to every individual."

EIGHTH.

The legislation of Congress, acts of 1866 and 1871, for the construction of the railroad, its public uses, grant of lands, and their sale by the road, and requiring re-payment of value of lands erroneously patented as required by the acts of 1887 and 1896, shows that the railroad company was a trustee of the government for those purposes.

The purpose of the United States by the acts of July 27, 1866 and March 3, 1871, was to cause the construction of a national highway for the purposes as expressed in the act, of providing for the transportation of troops, munitions of war, public stores, and the mails, and to secure the construction of the road a large grant of land

was made to the company, which it was authorized to sell and devote the proceeds for construction purposes, or to mortgage for that purpose, and was required to repay the value of lands erroneously patented and sold by it.

The railroad company was constituted a public agent or trustee of the United States to carry out those acts for a public purpose.

United States v. Michigan, 190 U. S. 379;
California v. Southern Pacific Railroad, 127 U. S. 1;
United States v. Union Pac. Rd., 160 U. S. 1.

And the power and right to consummate those ends were franchises conferred by the United States for national purposes.

It was not unusual in adjusting these enormous land grants for quantities of land to be erroneously patented to the railroads, and so by the amendatory acts of March 3, 1887, and March 2, 1896, Congress provided for a repayment to the United States of the government price of such lands as might be erroneously patented and sold by the company to *bona fide* purchasers.

The whole scope of the legislation shows that the railroad company was a trustee for the United States, not only of the lands and rights conferred, but of surplus moneys received from the sale of lands erroneously patented.

In United States v. Michigan, 190 U. S. 396, 401, 405, the court held that the state of Michigan, to which state a grant of lands had been made to aid in the construction of a canal, was a trustee for the United States of the sur-

plus moneys received from the sale of lands granted to aid in the construction.

The court said in that case:

> "Whether under these circumstances technical words were used to express the thought that the state was to be a trustee, is not important, if upon a reading of the statutes and a survey of the conditions of the country when the acts were passed, it is apparent that the intent was that the state should occupy the position of trustee in the construction and operation of the canal."

And the court further said:

> "The general purpose of these statutes was to build a ship canal by means of the funds procured from the sale or other disposition of the public lands of the United States, to be used by all those whose business or pleasure should call them to pass through it in order to reach their destination."
>
> * * * * * * * * * * * * *
>
> "Where Congress grants land to a state to be used as provided in this statute we think a trust, or power to dispose of the lands for the purpose of carrying out the improvement is granted; and in this case no beneficial interest passes to the state by the language used, considering the whole statute."
>
> * * * * * * * * * * * * *
>
> "We are of opinion that the bill shows a cause of action against the state of Michigan as trustee, and its liability to pay over the surplus moneys (if any), which, upon an accounting, it may appear, have arisen from the sale of the granted lands, over and above all cost of the construction of the canal and the necessary work appertaining thereto, and the supervision thereof, together with the surplus money arising from the tolls collected, which latter sum by the demurrer is admitted to amount to $68,927.12."

The court therefore held that as the suit involved the establishment and enforcement of a trust, it was cognizable in equity.

There is no difference in principle between the case of the United States v. Michigan and the present suit. The former made a grant of lands to aid in the construction of a canal, and in the present case Congress made a grant of lands to aid in the construction of a railroad, and constituted the company a national agency.

In both cases the grantee exercised franchises under the United States and was constituted a public agency for a national purpose, and in each case the grantee exercising these powers and franchises was a trustee of the United States and bound to account to and pay over to the government the surplus moneys arising from the sale of lands.

There was no beneficial interest passed to the Southern Pacific Railroad in the lands erroneously patented, or in the proceeds arising from their sale.

NINTH.

The principle is well settled that where a court of equity takes jurisdiction of a cause upon one ground, pertaining either to its exclusive or concurrent jurisdiction, that it will retain it to do complete justice, even to granting legal remedies.

United States v. Union Pacific Railroad Co., 160 U. S. 1 at page 52;
Ober v. Gallagher, 93 U. S. 199;
Root v. Railway, 105 U. S. 189, 205, 208;
Ward v. Todd, 103 U. S. 327;
Hopkins v. Grimshaw, 165 U. S. 342 at page 358;
Smyth v. Ames, 169 U. S. 466, 516, 517;

TENTH.

The present case is distinguished from United States v. Winona Railroad, 165 U. S. 481.

Counsel for appellants in the lower courts strongly relied upon the case of United States v. Winona Railroad, *supra*, to defeat the recovery by the United States of the government price of these lands.

That case was not brought to recover the government price, as the court states in the opinion, but counsel relied upon the following paragraph in the opinion: (165 U. S. 482).

> "that it does not appear from this record, either that the railroad company received an excess of lands, or has even received, these lands included,

the full quantity of lands promised in the grant, and further that it does not appear that there were not, within the granted or indemnity limits, lands which the company might have rightfully received, but for this erroneous certification."

The present case is different from the Winona case in the following controlling features:

(1). In the present case Congress reserved the right to amend the Southern Pacific grants of July 27, 1866, and March 3, 1871, (see section 20, act of 1866 appendix hereto) and in pursuance of such authority Congress passed the supplemental acts of March 3, 1887, and March 2, 1896, declaring in effect that the Southern Pacific Company should repay to the United States the government price of all lands erroneously patented under those grants, and sold to *bona fide* purchasers.

These acts create an express obligation on the part of the Southern Pacific to repay the government price as to such lands erroneously patented and sold to *bona fide* purchasers, whereas no such condition appears to have existed in the Winona case.

(2). In the present case the Southern Pacific has sold all, or nearly all, of these lands for a price largely in excess of $1.25 an acre, being the minimum government price and has received the benefits from such sales.

The answers in the present case, and in former litigations, which will be specifically referred to in this brief, show that the Southern Pacific has received very large benefits from the passage of the acts of 1887 and 1896, and having so accepted the benefits, it is bound by the obligations imposed by those acts to repay to the govern-

ment the price of $1.25 per acre. These conditions did not exist in the Winona case.

(3). It seems to have been assumed in the Winona case that if the Winona Railroad was required to repay to the United States the government price of those lands, it would meet with an irreparable loss by reason of the alleged fact that the Winona Railroad was entitled to select indemnity for those lands, and that the indemnity lands had been exhausted, so that no such indemnity selection could be made, and that therefore the government should not be allowed to deprive the Winona Railroad of the money value of such lands, where it had by its own acts prevented the Winona Railroad from selecting indemnity.

The lands in the present case were lands granted to the Atlantic and Pacific Railroad, and were within the granted and place limits of the Atlantic and Pacific grant. The legal title had been vested in the Atlantic and Pacific Railroad to these lands by relation as of the date of the act of July 27, 1866, and these lands had been forfeited to the United States, the title had been resumed by the government and the lands were restored to the public domain for the sole benefit of the United States, and not for the benefit of the Southern Pacific Railroad. The Southern Pacific could not take any of these lands, nor could it accept or take the value of them in any other way, or receive other benefits from the act of forfeiture.

All these matters and things had been finally and conclusively adjudged and determined by this court in former litigations.

Upon the authority of these former decisions, as well as upon general authority, the Southern Pacific was not entitled to take any of these lands in any manner, or form, or select lieu for them.

Therefore the Southern Pacific never lost any of these lands, and it has not suffered any injury by the United States cancelling patents to them, quieting title to them, or by recovering the government value in case of their sale to *bona fide* purchasers.

This absolutely controlling feature was not presented in the Winona case.

(4). Instead of there being a deficiency in the grant to the Southern Pacific, there is a large excess of lands to supply losses in the Southern Pacific grant, as appears from the following stipulation of fact:

> "It is stipulated and agreed * * * that odd sections of land, exceeding twenty thousand acres in quantity, are to be found within the indemnity limits of each of the grants made to the Southern Pacific Railroad Company, by the acts of July 27th, 1866, and March 3rd, 1871, which are subject to selections, but have not been selected by said company." [Record 279.]

It appears from the stipulation that as to the lands so situated, there are forty thousand acres within the indemnity limits of the Southern Pacific Railroad, main and branch lines, which remain unselected to this day, and which are subject to such indemnity selection.

(5). This suit is brought by the United States in pursuance of said acts of 1887 and 1896, requiring the Secretary of the Interior to adjust the several railroad land grants, and the Southern Pacific grant has not yet been

finally adjusted, so that it cannot be definitely ascertained what amount of lands it has lost, for which it might be entitled to make indemnity selections, nor what amount of indemnity lands remain.

It was decided in Oregon Railroad v. United States (189 U. S. 103, 115) that until there had been a final adjustment of the land grant it was not competent to show by other evidence that there was any deficiency in the grant.

The Southern Pacific, therefore, is in no position to say at this time that there is a deficiency.

ELEVENTH.

The acts of congress of March 3, 1887, and March 2, 1889, requiring repayment for lands erroneously patented and sold to bona fide purchasers are amendatory of the act of 1866.

By the authority reserved in Congress to alter, amend or repeal the act of July 27, 1866, (see appendix Sec. 20) Congress may pass any supplemental law, the object of which is to carry out the national purposes disclosed by the act, which mainly were to secure the construction of the road and secure to the United States the use and to adjust the grant to the railroad company, awarding to it what it is entitled to, and to the government that which is reserved.

Such supplemental acts are amendatory of the former act, the power to amend being expressly reserved.

United States v. Union Pacific Railroad, 160 U. S., 1, 32, 33;

Shields v. Ohio, 95 U. S. 319;
Wisconsin Railroad v. United States, 164 U. S. 190, 205;
United States v. Oregon Rd., 176 U. S. 47, 48.

TWELFTH.

The Southern Pacific Company has fully accepted the benefits of the acts of 1887, and 1896 and is bound by their obligations.

The confirmatory act of March 2, 1896, requiring the railroad company to repay to the United States the government price of the lands, was passed in the interests of the railroad company, and has been fully accepted and adopted by the railroad, and the company is now estopped from denying its liability.

It cannot be doubted but that the act of March 2, 1896, was for the benefit of the Southern Pacific Company. This is apparent from the fact, as shown by Exhibit "A" to defendant's answer, that the lands were sold at a price largely in excess of the government value. [Record 74-141.]

The answer alleges that the lands were so sold to *bona fide* purchasers, and that the titles of such purchasers are confirmed by the act of Congress of March 2, 1896. [Record 70, 71.] It is therefore obvious that the confirmation of the title alone will relieve the railroad company from the obligation to repay the purchase price, by reason of failure of title.

It is well settled that where an act is passed which is for the benefit, or in the interest of a corporation or per-

son, it will be presumed that the act was passed at the request of such corporation, and that the company has accepted its provisions.

In taking the benefits of the act the company, of course, is charged with its burdens.

Daniels v. Tearney, 102 U. S., 415, 421;
Grand Rapids v. Osborn, 193 U. S. 17, 29;
See also Sec. 1589 Cal. Civil Code.

In this case we are not, however, required to rely upon the legal presumption of acceptance, if that were necessary, but we have evidence in the record that the company did in fact accept the provisions of this act and claim its benefits, not alone in this suit, but in other litigations between the United States and the Southern Pacific Railroad Company.

In the supplemental answer filed by the Southern Pacific Railroad Company in the case of United States v. Southern Pacific Railroad Company, number 600 on the docket of the Circuit Court, [Record 569, 572], referring to the identical lands described in the bill in this case, the answer alleges that the lands were sold by the company to *bona fide* purchasers, and that the title of such purchasers has been confirmed, and that the United States is barred from bringing a suit to annul the title, by reason of the provisions of the act of March 2, 1896.

That part of the answer in said case, upon the subject, is as follows:

> "Before this suit was commenced, or demand made for reconveyance to the United States of any of the lands patented as aforesaid, the defendant Southern Pacific Railroad Company sold, and issued contracts and deeds of conveyance for, fifty-

seven thousand seven hundred and eleven acres of the lands conveyed to it by the said patents; the full particulars of which sales, contracts and deeds, and short particulars of the patents conveying to the said company the lands so sold, are set forth in "Exhibit A," attached to and made a part of this supplemental answer. Such sales were made, and contracts and deeds issued, to *bona fide* purchasers. * * *"

"By its act approved March 2, 1896, entitled 'An act to provide for the extension of the time within which suits may be brought to annul land patents, and for other purposes,' Congress provided that no patent to any land held by a *bona fide* purchaser should be vacated or annulled, and confirmed the right and title conveyed by such patents; and these defendants are advised and believe, and so say, that if it were in any wise true (which it is not) that the lands patented and sold as aforesaid were reserved from the lands granted to the defendant Southern Pacific Railroad Company by the said acts of Congress, as in the plaintiff's bill of complaint alleged, still this suit cannot be maintained, but is barred as to all such patented and sold lands, by the provision of the first section of the said act of March [illegible] 896."

[Record, 572, 573.]

Having accepted the benefits of this act and having secured a dismissal in said case 600, without prejudice as to the lands involved in this suit, because it had sold them, the company is charged with the performance of the obligations of the act, which is to repay to the United States the government price of the lands so erroneously patented and sold to *bona fide* purchasers.

THIRTEENTH.

Lands within the granted limits of the Atlantic and Pacific grant of July 27, 1866, cannot be taken by the Southern Pacific as indemnity under its grant of same date or later grant of March 3, 1871.

As before stated there are six tracts of land embraced in the decree of the Circuit Court which are situated within the granted or place limits of the Atlantic and Pacific of 1866, and which are also situated within the indemnity limits of the Southern Pacific grant of the same date, and are also situated within the indemnity limits of the Southern Pacific grant of 1871.

These six tracts, as found by the courts below, and as adjudged in the decree, were patented to the Southern Pacific Company under selections made by it *as a part of its grant of* 1871, and those patents were therefore erroneously issued. (See decree, Subd. IV., record 244, 245, 246.)

(a). These lands were in fact selected by the Southern Pacific and patented by the United States to that company as a part of the grant of March 3, 1871, and not under any other grant or claim of title.

This court definitely decided and determined, in the former litigations, that the Southern Pacific Company could not take such lands under its grant of 1871.

United States v. Southern Pacific Railroad Company, 146 U. S., 570, 615, 619;

Southern Pacific Railroad Company v. United States, 168 U. S. 1, 46, 47.

The action of the Interior Department in patenting these lands under the act of 1871, was therefore erroneous, and it is no defense for the Southern Pacific Railroad Company to now say that it might possibly have claimed these lands under some other grant, and that such claim might possibly have been allowed by the Interior Department.

Germania Iron Co. v. United States, 165 U. S. 379, 383.

The lands having been erroneously patented, it was proper for the Circuit Court to vacate the patents, and the adjustment act of 1887 and 1896 expressly provided that where such patents have been erroneously issued, and the lands have been sold to *bona fide* purchasers, the government shall be entitled to a judgment for the ordinary minimum price.

(b). It is a conceded fact that these six tracts of land were granted to the Atlantic and Pacific Railroad Company as a part of its primary or place lands, and that the legal title vested in that company as of date of the act of July 27, 1866, and that the Southern Pacific Railroad Company could under no circumstances have taken or held any of these tracts as against the Atlantic and Pacific Railroad Company, and it has been finally and conclusively adjudged and determined by this court in former litigations in the construction of the Atlantic and Pacific grant, and in the act forfeiting that grant of July 6, 1886, that the forfeiture of that grant was for the sole benefit of the United States, and that the Southern Pacific Railroad Company could not take any of those lands so forfeited.

From the conceded fact that the legal title to these lands was vested in the Atlantic and Pacific Railroad Company, and that they were forfeited for the sole benefit of the United States, it conclusively follows that these lands cannot be taken as indemnity by the Southern Pacific Railroad Company.

These lands described in the bill were set apart by act of Congress for the construction of the Atlantic and Pacific Railroad, and as these lands were granted to another railroad than the Southern Pacific for another and different object of internal improvement, the Southern Pacific cannot obtain any benefit from that grant, or by taking indemnity for them, which would amount to the same thing.

Southern Pacific v. United States, 168 U. S. 1, 47;
Clark v. Herrington, 186 U. S. 206, 208;
Southern Pacific v. United States, 189 U. S. 147, 452;
Chicago Railroad v. United States, 159 U. S. 372, at page 375;
Sioux City Railroad v. United States, 159 U. S., 349, 366;
St. Paul Railroad v. Winona Railroad, 112 U. S. 720;
Sioux City Railroad v. Chicago Railroad, 117 U. S. 406;
United States v. Missouri Railroad, 141 U. S. 358;
Southern Pacific Railroad, 6 L. D. 349, 350;
Southern Pacific Railroad, 6 L. D. 816;
Southern Pacific Railroad v. Moore, 11 L. D. 534;
Smead v. Southern Pacific, 29 L. D. 135.

The contention, issue, controversy and claim as to whether the Atlantic and Pacific grant was forfeited by the United States for the benefit of the Southern Pacific Railroad, or for the benefit solely of the United States, and whether the Southern Pacific Railroad Company can take or obtain any benefits from the forfeiture of the Atlantic and Pacific grant, have been finally and conclusively adjudged and determined against the Southern Pacific in the former litigations between the United States and said company as shown by the records in evidence in this cause, and those issues and controversies are no longer open to discussion.

United States v. Southern Pacific Railroad, 146 U. S. 570, 619;

Southern Pacific Railroad v. United States, 168 U. S. 1.

In St. Paul Railroad v. Winona Railroad, 112 U. S. 720, where lands were claimed by both roads under a grant of the same date, it was held that neither road could take *as indemnity*, lands falling within the *place limits* of the other road. This rule was reaffirmed in Sioux City Railroad v. Chicago Railroad, 117 U. S. 406.

In the cases of Chicago Railroad v. United States, 159 U. S. 372, at page 375, and Sioux City Railroad v. United States, 159 U. S. 349, 366, it was aga[illegible] that where two roads held under a grant of the [illegible] neither road could take as indemnity, lands w[illegible] place limits of the other road, although in tho[illegible] grant to the Sioux City road, or a large par[illegible] been forfeited for non-construction of the roa[illegible] Chicago Railroad attempted to select those forfeited

lands as indemnity, which the court held could not be done, and the court also held in those cases that neither road could use as a base for an indemnity selection, lands which fell within the place limits of the grant to the other railroad, although falling within its own place limits.

In the case in 146 U. S., 570, 615, 619, the court, referring to the fact that the Atlantic and Pacific had definitely located its road, and that its grant attached, said:

> "There never was a time, therefore, at which the grant of the Southern Pacific could be said to have attached to these lands and the plausible argument based thereon, made by counsel in behalf of the Southern Pacific Company falls to the ground." (146 U. S. 603.)

And again the court said:

> "Neither can it fairly be said that it was the intent of Congress that these lands should pass conditionally to the Southern Pacific Company. Good faith must be imputed to Congress. It cannot be supposed that Congress intended to give to the Southern Pacific Company that which it had already given to the Atlantic and Pacific Company." [146 U. S. 604.]

The court further said:

> "Again, there can be no question, under the authorities heretofore cited, that if the act of forfeiture had not been passed by Congress, the Atlantic and Pacific could yet construct its road, and that constructing it, its title to these lands would become perfect. No power but that of Congress could interfere with this right of the Atlantic and Pacific. No one but the grantor can raise the question of a breach of a condition subsequent. Congress, by the act of forfeiture of July 6, 1886, determined what should become of the lands forfeited. It enacted that they should be restored to the public domain. The for-

> feiture was not for the benefit of the Southern Pacific; it was not to enlarge its grant as it stood prior to the act of forfeiture. It had given to the Southern Pacific all that it had agreed to in its original grant, and now finding that the Atlantic and Pacific was guilty of a breach of a condition subsequent, it elected to enforce a forfeiture for that breach, and a forfeiture for its own benefit. * * * * * By that act of forfeiture the title of the Atlantic and Pacific was retaken by the general government and retaken for its own benefit and not that of the Southern Pacific Company and that the latter company has no title of any kind to these lands." [146 U. S. 606, 607.]

In the latter case of Southern Pacific v. United States, 168, U. S. 1, the court reaffirmed all that it had said in regard to the construction of the Atlantic and Pacific grant, and the construction and effect of the forfeiture act of 1886.

The court did not in those cases undertake to determine the extent or validity of the Southern Pacific grant of 1866, but what it did do was to reaffirm the doctrine that the forfeiture of the Atlantic and Pacific grant, *whatever the extent of that grant may have been, was for the benefit of the United States and not for the benefit of the Southern Pacific.* The extent of the Southern Pacific grant of 1866 was determined in 183 U. S. 519.

Now, as before stated, there is no dispute as to what the extent of the Atlantic and Pacific grant was, nor can it be denied that the Atlantic and Pacific would have taken and held these lands being within its place limits, as against any claim of the Southern Pacific to select them as indemnity.

In Southern Pacific Railroad v. United States, 168 U. S. 1, 47, the court distinctly held as above pointed out, that the Southern Pacific Railroad Company could not take as indemnity, lands within its indemnity limits under the grant of 1871, which fell within the granted limits of the forfeited Atlantic and Pacific grant. That case involved lands in that precise situation (168 U. S. 46, 47) and the same argument was made in that case as is now made by appellant.

The contention of the Southern Pacific that the selection of indemnity lands attached only from the date of selection and not from the date of the grant, and that it therefore may now select the forfeited granted lands of the Atlantic and Pacific grant, is met and overthrown by this decision, because if it cannot take as indemnity under the grant of 1871 any of those lands, why should it take them as indemnity under the grant of 1866?

In Southern Pacific Railroad Company v. United States, 189 U. S. 447, 452, the Southern Pacific Railroad Company claimed a right to hold as indemnity, and to select as such indemnity when it got ready, lands falling within the indemnity limits of its grant of 1871, which also fell within the lands withdrawn on account of the grant to the Texas Pacific Railroad and the court affirmed the decree forever enjoining the Southern Pacific Railroad Company from claiming any of those lands at all. In that case the court said: [189 U. S. 451.]

> "It is argued further, however, that if the Southern Pacific did not get the lands in question under its primary grant *it may take a part of them as indemnity lands.* It is said that the company has a right to take them for that purpose if the status of

> the lands at the time of selection permits it. Ryan v. Railroad Company, 99 U. S. 382. That contention seems to be disposed of by Southern Pacific Railroad v. United States, 168 U. S., 1, 47, 66, and the practice of the land department for many years has been inconsistent with it. Southern Pacific Railroad v. Moore, 11 L. D. 534; Moore v. Kellogg, 17 L. D. 391; Smead v. Southern Pacific Railroad, 29 L. D. 135."

In that case the court also seems to have been of the opinion that the provision in the act of 1866, which authorized the Southern Pacific to make indemnity selections, forbade the selection by that company of lands granted to another road, and the court said: [See 189 U. S. 452.]

> "It is not clear that the language of the statute does not forbid it. The indemnity to the Atlantic and Pacific, by section 3 of its charter adopted for the Southern Pacific by section 18, is to be other lands 'in alternate sections and designated by odd numbers, not more than ten miles beyond the limits of said alternate sections, and not including the reserved numbers.'"

The Southern Pacific indemnity lands, as thus pointed out by the court, were to be taken from *alternate* sections from *other* lands, and from lands *not reserved*. If the exception of *reserved* lands as lands from which that company could not select indemnity did not include lands reserved for another company what reserved lands could it operate upon, as the even sections had already been eliminated, and *other* lands also were to be taken, but not reserved lands, or reserved numbers.

In Clark v. Herrington, 186 U. S. 206, 208, the court held that one railroad company could not select as in-

demnity the alternate sections within the limits of another railroad grant, which were not granted to such other railroad but which were set apart to be sold at a double minimum price on account of the railroad grant.

Now, what forbade the selection of those lands as indemnity when they were open public lands on the date when the railroad company sought to select them, in Clark v. Herrington? Nothing forbade it but the principle that lands set apart for one purpose of internal improvement could not be taken for another such purpose by another company, and the court held that they could not be selected as indemnity.

This case is quoted with approval in Southern Pacific v. United States, 189 U. S. 452.

This principle was referred to in Chicago Railroad v. United States, 159 U. S. 372, at page 375, in which the court said:

> "If as matter of law and fact, these lands were never granted for the benefit of the Milwaukee road, but were granted in aid of the construction of the Sioux City road, and for no other purpose, they could never—consistently with the act of Congress—have been used by the state for the benefit of the Milwaukee road * * *. As these lands were set apart exclusively for the construction of the Sioux City road, no failure to construct that road by the state or by the corporation charged with the duty of building it could, in any case, without the assent of Congress, justify their being applied in aid of the construction of another and distinct road."

and the case of Sioux City Railroad v. United States, 159 U. S. 349, 366, sustains the principle.

It was distinctly held by Judge Lamar in the case of Southern Pacific Railroad Company, 6 L. D. 349, 350,

that the Southern Pacific Railroad Company had no right to select as indemnity, lands falling within the place limits of the forfeited Atlantic and Pacific grant and in considering that question, Judge Lamar said:

> "In considering said rule upon the answer of the company you held * * *
>
> " 'That the lands within the granted limits of the Atlantic and Pacific and the indemnity limits of the Southern Pacific "could not have been selected as indemnity by the Southern Pacific", for the reason that, although said lands were withdrawn for the Southern Pacific Company, they fell within the granted limits of the Atlantic and Pacific, upon the subsequent definite location of its road.' * * *
>
> "I see no reason for any further action by the department upon this rule except as to lands embraced within the common granted or primary limits of both roads."

In the later case of Southern Pacific Railroad Company, 6 L. D. 816, Secretary Vilas said as to lands within the indemnity limits of the Southern Pacific Railroad branch line, and within the primary limits of the grant to the Atlantic and Pacific:

> "It has been settled by the Supreme Court that lands granted to any company are not subject to selection as indemnity by another company, (112 U. S. 414, 117 U. S. 406) and I concur in your opinion that proceedings should be instituted to vacate the patents erroneously issued for such lands."

In both of these cases, Judge Lamar and Secretary Vilas concurred in this view and based the decision upon the principles laid down in the Winona case, and Sioux City case.

In the first case decided by Judge Lamar the lands were the identical lands subject to suit in this bill, claimed by the Southern Pacific as indemnity and situated within the Atlantic and Pacific place limits and in the latter case, Secretary Vilas applied the principle to the Southern Pacific branch line grant, not because of the proviso in section 23, but because of the decision by Judge Lamar and the decisions above mentioned.

FOURTEENTH.

Neither the dismissal of the lands in this suit from a former litigation, nor the adjudication in such former litigation, as to the rights and claims of the Southern Pacific under its grants, nor the adjudication of title to other lands, estops the government from maintaining this bill.

The contention appears to be made that because in a former suit brought by the United States against the Southern Pacific Railroad Company, to vacate patents to a large quantity of lands, including those described in this bill, and because the government voluntarily dismissed without prejudice from that bill the lands involved in the present suit, that such action estops the United States from maintaining the present suit. No adjudication was had in the former suit in favor of the Southern Pacific Railroad against the United States, in any wise affecting the title to these lands, nor affecting the right of either party to them.

As to this contention of the Southern Pacific the Circuit Court of Appeals for the Ninth Circuit said concerning it:

> "but a discussion of this point is wholly unnecessary, because the other suit (No. 600) as to certain lands was dismissed without prejudice, and such a dismissal cannot be pleaded in bar (Hughes v. United States, 4 Wall. 232, 237, 18 L. Ed. 303; Bunker Hill & Sullivan M. Co. v. Shoshone M. Co., 109 Fed. 504, 507, 47 C. C. A. 200, and authorities there cited) nor can it in any other manner affect the rights of the government in the present suit." [133 Fed. 661.]

(1) This point or contention has not been assigned as error of the Circuit Court below, [record 768] nor has it been assigned as error on this appeal. [Record 813-817.]

(2) The former suit was brought against the Southern Pacific Railroad Company, and the *bona fide* purchasers from that company were not parties, so that no adjudication could have been had as to the *title* to the land or rights of such *bona fide* purchasers.

The answer in the former suit averred sales by the Southern Pacific to such numerous *bona fide* purchasers and showed that no adjudication could be had as to such titles for want of proper parties. [Record 569, 572.]

In the present suit such purchasers are personally brought into court or properly represented, and the present bill seeks an adjudication as to their titles and rights, and also seeks a recovery from the railroad of the government price of such lands, so erroneously patented and sold.

It is apparent that the parties are different and that the objects of the suits are entirely different, and further, that there has been no adjudication affecting the questions now presented.

The case is not one of "splitting demands," because the *subject matter* is entirely different, being other lands.

It has been solemnly stipulated in the present case, that the dismissal of these lands in the former action was "without prejudice," [record 706, 707], and if so, such dismissal cannot prejudice the rights of the government in the present suit.

In urging this ground as an estoppel against the government from maintaining the present suit, counsel for the defendants evidently fail to comprehend the difference between a former adjudication resulting from *identity of subject matter* and *identity of issues* determined in the former suit.

It is only where the *subject matter* of a suit is the same—where it is inseverable—that the former judgment operates as an estoppel to prevent the defendant from bringing forward, in a second suit, the same cause of action, or a part of it. The principle has no application where the *subject matter* is *different*. A judgment may work an estoppel upon both parties where the *subject matter* is the same, or where the subject matter is different, but the *issues are the same*.

In Southern Pacific Railroad v. United States, 168 U. S. 1, at page 50, the court, commenting upon this principle, from Cromwell v. Sac county, said:

> "that a judgment upon the merits constitutes an absolute bar to a subsequent suit upon the *same cause of action* in respect to every matter offered

> and received in evidence, or which might have been offered to sustain or defeat the claim in controversy, while if the second action is upon a *different claim or demand,* the judgment in the prior action operates as an estoppel only as to those matters in issue or points controverted upon the determination of which the finding or verdict was rendered."

In the case just cited (168 U. S. 1) counsel for the railroad company contended that the cases decided in 146 U. S. 570, 615, were not a bar to the defense in that case, because the subject matter was different, that is, the suit involved separate and distinct tracts of land; but the court, while conceding that the subject matter was different, and conceding that the subject matter was severable, held that the *rights, questions and claims* of the respective parties in issue in the former suits and determined by the court, precluded the railroad company from urging the same rights, questions and claims in the latter case, and that such adjudication could be made a ground of recovery by the government in the latter case.

It is obvious that if the contention of counsel that the cause of action is inseverable were sound, that the case of United States v. Southern Pacific Railroad, decided in 146 U. S. 570, would have operated as a bar *against the government* to maintain the two cases, or either of them, of United States v. Southern Pacific Railroad, decided in 146 U. S. 615, 619, but in each case as here, the subject matter was different, being distinct tracts of land.

It is equally apparent that the adjudication of either one of the cases of United States v. Southern Pacific

Railroad, 146 U. S. 570, 615, 619, would have operated as a bar and estoppel against maintaining an action for the lands involved in the case of United States v. Southern Pacific Railroad, 168 U. S. 1, 66.

The same principle would apply in the numerous cases cited by the court in 168 U. S. 49, 50 and 51, where the court allowed a recovery upon different coupons of bonds of the same issue, and of different bonds of the same issue and of different tracts of land, such as

> Last Chance Mining Company v. Tyler Mining Company, 157 U. S. 683, 691,

where the plaintiff in the latter case was permitted to recover a tract of land not the subject matter of a former suit, but which was embraced within the limits of a mining claim which it had been adjudged to be valid and legally located.

Counsel for defendant strangely loses sight of the position which the Southern Pacific Railroad Company occupies in these litigations. The former adjudication was against that company, and it is precluded from questioning the *claims, issues, rights* and *facts* determined in the former litigations. The estoppel is against that company from questioning the former adjudication, but does not estop the United States from recovering other tracts of land from that company, and from having the benefit of the former adjudication, as has already been decided.

In the present bill the United States has pleaded and claimed the benefit of the adjudications in the former suits, holding that the lands within the 30-mile limits

of the Atlantic and Pacific grant cannot be taken in any manner by the Southern Pacific, under its grant of March 3, 1871, and in support of these averments the government has introduced in evidence the records of the former adjudications [record 291, 363, 514], and it is stipulated that the reported opinions of the Supreme Court may be considered in evidence. [Record 279.]

That the government is entitled to the benefit of the adjudications in the former suits against the Southern Pacific Railroad Company as to any *right, question* or *fact,* distinctly put in issue and finally determined, there can be no doubt, even although the subject matter in such former suits was different from the present suit, involving, as such former suits did, other and distinct tracts of land.

Southern Pacific Railroad v. United States, 168 U. S. 1.

Conclusion.

We submit in conclusion that the decree of the Circuit Court, affirmed by the Circuit Court of Appeals, in favor of the United States, for the unsold lands erroneously patented, and for the minimum government price of lands erroneously patented and sold to *bona fide* purchasers, was right, and should be affirmed.

Submitted,

JOSEPH H. CALL,
Special Assistant to Attorney General.

APPENDIX.

ACTS OF CONGRESS.

ATLANTIC AND PACIFIC GRANT

July 27, 1866 (14 Stat., 292).

AN ACT Granting lands to aid in the construction of a railroad and telegraph line from the States of Missouri and Arkansas to the Pacific Coast.

Section 1 incorporated the Atlantic and Pacific Railroad Company and provided for the construction and location of a line of railroad, as follows:

"Beginning at or near the town of Springfield, in the State of Missouri, thence to the western boundary line of said State, and thence by the most eligible railroad route, as shall be determined by said company, to a point on the Canadian river; thence to the town of Albuquerque, on the River Del Norte, and thence by way of Aqua Frio, or other suitable pass, to the headwaters of the Colorado Chiquito, and thence along the thirty-fifth parallel of latitude as near as may be found most suitable for a railway route to the Colorado river, at such point as may be selected by said company for crossing; thence by the most practicable and eligible route to the Pacific."

Section 2 grants a right of way, etc.

'SEC. 3. *And be it further enacted,* That there be, and hereby is, granted to the Atlantic and Pacific Railroad Company, its successors and assigns, for the purpose of aiding in the construction of said railroad and

telegraph line to the Pacific Coast, and to secure the safe and speedy transportation of the mails, troops, munitions of war, and public stores over the route of said line of railway and its branches, every alternate section of public land, not mineral, designated by odd numbers, to the amount of twenty alternate sections per mile on each side of said railroad line, as said company may adopt, through the Territories of the United States, and ten alternate sections of land per mile on each side of said railroad whenever it passes through any State; and whenever, on the line thereof, the United States have full title, not reserved, sold, granted, or otherwise appropriated, and free from pre-emption or other claims or rights, at the time the line of said road is designated by a plat thereof, filed in the office of the Commissioner of the General Land Office, and whenever, prior to said time, any of said sections or parts of sections shall have been granted, sold, reserved, occupied by homestead settlers, or pre-empted or otherwise disposed of, other lands shall be selected by said company in lieu thereof, under the direction of the Secretary of the Interior, in alternate sections, and designated by odd numbers, not more than ten miles beyond the limits of said alternate sections, and not including the reserved numbers: *Provided,* That if said route shall be found upon the line of any other railroad route, to aid in the construction of which lands have been heretofore granted by the United States, as far as the routes are upon the same general line, the amount of land heretofore granted shall be deducted from the amount granted by this act: *Provided further,* That the railroad company receiving the previous grant

of land may assign their interest to said 'Atlantic and Pacific Railroad Company,' or may consolidate, confederate, and associate with said company upon the terms named in the first and seventeenth sections of this act: *Provided further,* That all mineral lands be, and the same are hereby, excluded from the operations of this act; and in lieu thereof a like quantity of unoccupied and unappropriated agricultural lands in odd-numbered sections nearest to the line of said road, and within twenty miles thereof, may be selected as above provided: *And provided further,* That the word 'mineral,' when it occurs in this act, shall not be held to include iron or coal: *And provided further,* That no money shall be drawn from the Treasury of the United States to aid in the construction of the said 'Atlantic and Pacific Railroad.'"

"SEC. 4. *And be it further enacted,* That whenever said Atlantic and Pacific Railroad Company shall have twenty-five consecutive miles of any portion of said railroad and telegraph line ready for the service contemplated, the President of the United States shall appoint three commissioners to examine the same, who shall be paid a reasonable compensation for their services by the company, to be determined by the Secretary of the Interior; and if it shall appear that twenty-five consecutive miles of said road and telegraph line have been completed in a good, substantial and workmanlike manner, as in all other respects required by this act, the commissioners shall so report under oath to the President of the United States, and patents of lands, as aforesaid, shall be issued to said company, confirming to said company

the right and title to said lands situated opposite to and coterminous with said completed section of said road. And from time to time, whenever twenty-five additional consecutive miles shall have been constructed, completed and in readiness as aforesaid, and verified by said commissioners to the President of the United States, then patents shall be issued to said company conveying the additional sections of land as aforesaid, and so on as fast as every twenty-five miles of said road is completed as aforesaid."

"SEC. 6. *And be it further enacted,* That the President of the United States shall cause the lands to be surveyed for forty miles in width on both sides of the entire line of said road, after the general route shall be fixed, and as fast as may be required by the construction of said railroad; and the odd sections of land hereby granted shall not be liable to sale or entry or pre-emption before or after they are surveyed except by said company as provided in this act; but the provisions of the act of September, 1841, granting pre-emption rights, and the acts amendatory thereof, and of the act entitled, 'An act to secure homesteads to actual settlers on the public domain,' approved May 20, 1862, shall be, and the same are, hereby extended to all other lands on the line of said road when surveyed, excepting those hereby granted to said company."

"SEC. 8. *And be it further enacted,* That each and every grant, right, and privilege herein, are so made and given to and accepted by said Atlantic and Pacific Railroad Company upon and subject to the following conditions, namely: That the said company shall commence

the work on said road within two years from the approval of this act by the President, and shall complete not less than fifty miles per year after the second year, and shall construct, equip, furnish, and complete the main line of the whole road by the fourth day of July, Anno Domini eighteen hundred seventy-eight."

"SEC. 9. *And be it further enacted,* That the United States make the several conditional grants herein, and that the said Atlantic and Pacific Railroad Company accept the same, upon the further condition that if the said company make any breach of the conditions hereof, and allow the same to continue for upwards of one year, then, in such case, at any time hereafter, the United States may do any and all acts and things which may be needful and necessary to insure a speedy completion of the said road."

"SEC. 11. *And be it further enacted,* That said Atlantic and Pacific Railroad, or any part thereof, shall be a post route and military road, subject to the use of the United States for postal, military, naval and all other Government service, and also subject to such regulations as Congress may impose restricting the charges for such Government transportation."

"SEC. 12. *And be it further enacted,* That the acceptance of the terms, conditions, and impositions of this act by the said Atlantic and Pacific Railroad Company shall be signified in writing under the corporate seal of said company, duly executed, pursuant to the direction of its board of directors first had and obtained, which acceptance shall be made within two years after the passage of this act, and not afterwards, and shall

be deposited in the office of the Secretary of the Interior."

"SEC. 18. *And be it further enacted,* That the Southern Pacific Railroad, a company incorporated under the laws of the State of California, is hereby authorized to connect with the said Atlantic and Pacific Railroad, formed under this act, at such point near the boundary line of the State of California, as they shall deem most suitable for a railroad line to San Francisco; and shall have a uniform gauge and rate of freight or fare with said road, and in consideration thereof, to aid in its construction, shall have similar grants of land, subject to all the conditions and limitations herein provided; and shall be required to construct its road on the like regulations, as to time and manner, with the Atlantic and Pacific Railroad herein provided for."

"SEC. 20. *And be it further enacted,* That the better to accomplish the object of this act, namely, to promote the public interest and welfare by the construction of said railroad and telegraph line, and keeping the same in working order, and to secure to the Government at all times, but particularly in time of war, the use and benefits of the same for postal, military, and other purposes, Congress may, at any time, having due regard for the rights of said Atlantic and Pacific Railroad Company, add to, alter, amend, or repeal this act."

JOINT RESOLUTION OF JUNE 28, 1870.

(16 Stat. L., 382).

"*Be it resolved by the Senate and House of Representatives of the United States of America, in Congress assembled,* That the Southern Pacific Railroad Company of California may construct its road and telegraph line, as near as may be, on the route indicated by the map filed by said company in the Department of the Interior on the third day of January, eighteen hundred and sixty-seven, and upon the construction of each section of said road, in the manner and within the time provided by law, and notice thereof being given by the company to the Secretary of the Interior, he shall direct an examination of each such section by commissioners to be appointed by the President, as provided in the act making a grant of land to said company, approved July twenty-seventh, eighteen hundred and sixty-six, and upon the report of the commissioners to the Secretary of the Interior that such section of said railroad and telegraph line has been constructed as required by law, it shall be the duty of the said Secretary of the Interior to cause patents to be issued to said company for the sections of land coterminous to each constructed section reported on as aforesaid, to the extent and amount granted to said company by the said act of July twenty-seventh, eighteen hundred and sixty-six, expressly saving and reserving all the rights of actual settlers, together with the other conditions and restrictions provided for in the third section of said act."

TEXAS PACIFIC AND SOUTHERN PACIFIC ACT.

March 3, 1871 (16 Stat. L., 573, 579).

"AN ACT To incorporate the Texas Pacific Railroad Company and to aid in the construction of its road, and for other purposes."

Sections 1 to 22 of this act incorporated and made a grant of lands to the Texas Pacific Railroad Company.

Section 23 provided as follows:

"That for the purpose of connecting the Texas Pacific Railroad with the city of San Francisco, the Southern Pacific Railroad Company of California is hereby authorized (subject to the laws of California) to construct a line of railroad from a point at or near Tehachapa Pass, by way of Los Angeles, to the Texas Pacific Railroad at or near the Colorado River, with the same rights, grants and privileges, and subject to the same limitations, restrictions, and conditions as were granted to said Southern Pacific Railroad Company of California by the act of July twenty-seven, eighteen hundred and sixty-six: *Provided, however,* That this section shall in no way affect or impair the rights, present or prospective, of the Atlantic and Pacific Railroad Company or any other railroad company."

ACT OF FORFEITURE.

Act of July 6, 1886 (24 Stat. L., 123).

AN ACT to forfeit the lands granted to the Atlantic and Pacific Railroad Company, etc.

"*Be it enacted by the Senate and House of Representatives of the United States of America in Congress Assembled,* That all the lands, excepting the right of way, and the right, power and authority given to said corporation to take from the public land adjacent to the line of

said road material of earth, stone, timber, and so forth, for the construction thereof, including all necessary grounds for station buildings, workshops, depots, machine shops, switches, side tracks, turntables, and water stations, heretofore granted to the Atlantic and Pacific Railroad Company by an act of Congress entitled 'An act granting lands to aid in the construction of railroad and telegraph lines from the States of Missouri and Arkansas to the Pacific Coast,' approved July twenty-seventh, eighteen hundred and sixty-six, and subsequent acts and joint resolutions of Congress which are adjacent to and coterminous with the uncompleted portions of the main line of said road, embraced within both the granted and the indemnity limits, as contemplated to be constructed under and by the provisions of said act of July twenty-seventh, eighteen hundred and sixty-six, and acts and joint resolutions subsequent thereto and relating to the construction of said road and telegraph line be, and the same are hereby, declared forfeited and restored to the public domain."

ACT OF CONGRESS OF MARCH 3, 1887.

(24 Stats. 556.)

AN ACT to provide for the adjustment of land grants made by Congress to aid in the construction of railroads, and for the forfeiture of unearned lands, and for other purposes.

"*Be it enacted by the Senate and House of Representatives of the United States of America in Congress Assembled,* That the Secretary of the Interior be, and is hereby, authorized and directed to immediately adjust, in accordance with the decisions of the Supreme Court,

each of the railroad land grants made by Congress to aid in the construction of railroads and heretofore unadjusted.

SEC. 2. That if it shall appear, upon the completion of such adjustments respectfully, or sooner, that lands have been, from any cause, heretofore erroneously certified or patented by the United States, to or for the use or benefit of any company claiming by, through or under grant from the United States, to aid in the construction of a railroad, it shall be the duty of the Secretary of the Interior to thereupon demand from such company a relinquishment or re-conveyance to the United States of all such lands, whether within granted or indemnity limits; and if such company shall neglect or fail to so re-convey such lands to the United States within ninety days after the aforesaid demand shall have been made, it shall thereupon be the duty of the Attorney-General to commence and prosecute in the proper courts the necessary proceedings to cancel all patents, certification, or other evidence of title heretofore issued for such lands, and to restore the title thereof to the United States.

SEC. 3. That if, in the adjustment of said grants, it shall appear that the homestead of pre-emption entry of any *bone fide* settler has been erroneously cancelled on account of any railroad grant or the withdrawal of public lands from market, such settler upon application shall be reinstated in all his rights and allowed to perfect his entry by complying with the public land laws: *Provided*, That he has not located another claim or made an entry in lieu of the one so erroneously canceled: *And provided*

also, That he did not voluntarily abandon said original entry. *And provided further,* That if any of said settlers do not renew their application to be reinstated within a reasonable time, to be fixed by the Secretary of the Interior, then all such unclaimed lands shall be disposed of under the public land laws, with priority of right given to bona fide purchasers of said unclaimed lands, if any, and if there be no such purchasers, then to bona fide settlers residing thereon.

SEC. 4. That as to all lands, except those mentioned in the foregoing section, which have been so erroneously certified or patented as aforesaid, and which have been sold by the grantee company to citizens of the United States, or to persons who have declared their intention to become such citizens, the person or persons so purchasing in good faith, his heirs or assigns, shall be entitled to the land so purchased upon making proof of the fact of such purchase at the proper land office, within such time and under such rules as may be prescribed by the Secretary of the Interior, after the grants, respectively, shall have been adjusted; and patents of the United States shall issue therefor, and shall relate back to the date of the original certification of patenting, and the Secretary of the Interior, on behalf of the United States, shall demand payment from the company which has so disposed of such lands of an amount equal to the Government price of similar lands; and in case of neglect or refusal of such company to make payment as hereafter specified, within ninety days after the demand shall have been made, the Attorney-General shall cause suit or suits to be brought against such company for the

said amount: *Provided,* That nothing in this act shall prevent any purchaser of lands erroneously withdrawn, certified or patented as aforesaid from recovering the purchase money therefor from the grantee company, less the amount paid to the United States by such company as by this act required: *And provided,* That a mortgage or pledge of said lands by the company shall not be considered as a sale for the purpose of this act, nor shall this act be construed as a declaration of forfeiture of any portion of any land grant for conditions broken, or as authorizing an entry for the same, or as a waiver of any rights that the United States may have on account of any breach of said conditions.

SEC. 5. That where any said company shall have sold to citizens of the United States, or to persons who have declared their intention to become such citizens, as a part of its grant, lands not conveyed to or for the use of such company, said lands being the numbered sections prescribed in the grant, and being coterminous with the constructed parts of said road, and where the lands so sold are for any reason excepted from the operation of the grant to said company, it shall be lawful for the bona fide purchaser thereof from said company to make payment to the United States for said lands at the ordinary Government price for like lands, and thereupon patents shall issue therefor to the said bona fide purchaser, his heirs or assigns: *Provided,* That all lands shall be excepted from the provisions of this section which at the date of such sales were in the bona fide occupation of adverse claimants under the pre-emption or homestead laws of the United States, and whose claims and occupa-

tion have not since been voluntarily abandoned, as to which excepted lands the said pre-emption and homestead claimants shall be permitted to perfect their proofs and entries and receive patents therefor: *Provided further,* That this section shall not apply to lands settled upon subsequent to the first day of December, eighteen hundred and eighty-two, by persons claiming to enter the same under the settlement laws of the United States, as to which lands the parties claiming the same as aforesaid shall be entitled to prove up and enter as in other like cases.

SEC. 7. That no more lands shall be certified or conveyed to any State or to any corporation or individual, for the benefit of either of the companies herein mentioned, where it shall appear to the Secretary of the Interior that such transfers may create an excess over the quantity of lands to which such State, corporation, or individual would be rightfully entitled."

Approved, March 3, 1887. [24 Stat. 556.]

ACT OF CONGRESS, FEBRUARY 12, 1896.

(29 Stat. 6.)

"*Be it enacted by the Senate and House of Representatives of the United States of America in Congress Assembled,* That section four of an act entitled 'An act to provide for the adjustment of land grants made by Congress to aid in the construction of railroads and for the forfeiture of unearned lands, and for other purposes,' approved March third, eighteen hundred and eighty-seven, be, and the same is hereby, amended by adding thereto the following proviso: *Provided further,* That where

such purchasers, their heirs or assigns, have paid only a portion of the purchase price to the company, which is less than the Government price of similar lands, they shall be required, before the delivery of patent for their lands, to pay to the Government a sum equal to the difference between the portion of the purchase price so paid and the Government price, and in such case the amount demanded from the company shall be the amount paid to it by such purchaser.' "

ACT OF CONGRESS OF MARCH 2, 1896.

(29 Stat. 42.)

"*Be it enacted, &c.,* That suits by the United States to vacate and annul any patent to lands heretofore erroneously issued under a railroad or wagon road grant shall only be brought within five years from the passage of this act, and suits to vacate and annul patents hereafter issued shall only be brought within six years after the date of the issuance of such patents, and the limitation of section eight of chapter five hundred and sixty-one of the acts of the second session of the Fifty-first Congress, and amendments thereto, is extended accordingly as to the patents herein referred to. But no patent to any lands held by a bona fide purchaser shall be vacated or annulled, but the right and title of such purchaser is hereby confirmed: *Provided,* That no suit shall be brought or maintained, nor shall recovery be had for lands or the value thereof, that were certified or patented in lieu of other lands covered by a grant which were lost or relinquished by the grantee in consequence of the failure of the Government or its officers to withdraw the same from sale or entry.

SEC. 2. That if any person claiming to be a *bona fide* purchaser of any lands erroneously patented or certified shall present his claim to the Secretary of the Interior prior to the institution of a suit to cancel a patent or certification, and if it shall appear that he is a bona fide purchaser, the Secretary of the Interior shall request that suit be brought in such case against the patentee, or the corporation, company, person, or association of persons, for whose benefit the certification was made, for the value of said land, which in no case shall be more than the minimum Government price thereof, and the title of such claimant shall stand confirmed. An adverse decision by the Secretary of the Interior on the bona fides of such claimant shall not be conclusive of his rights, and if such claimant, or one claiming to be a bona fide purchaser, but who has not submitted his claim to the Secretary of the Interior, is made a party to such suit, and if found by the court to be a bona fide purchaser, the court shall decree a confirmation of the title, and shall render a decree in behalf of the United States against the patentee, corporation, company, person, or association of persons, for whose benefit the certification was made for the value of the land as hereinbefore provided. Any bona fide purchaser of lands patented or certified to a railroad company, and who is not made a party to such suit, and who has not submitted his claim to the Secretary of the Interior, may establish his right as such bona fide purchaser in any United States court having jurisdiction of the subject-matter, or at his option as prescribed in sections three and four of chapter three

hundred and seventy-six of the acts of the second session of the Forty-ninth Congress.

SEC. 3. That if at any time prior to the institution of suit by the Attorney-General to cancel any patent or certification of lands erroneously patented or certified, a claim or statement is presented to the Secretary of the Interior by or on behalf of any person or persons, corporation or corporations, claiming that such person or persons, corporation or corporations, is a bona fide purchaser or are *bona fide* purchasers of any patented or certified land by deed or contract, or otherwise, from or through the original patentee or corporation to which patent or certification was issued, no suit or action shall be brought to cancel or annul the patent or certification for said land until such claim is investigated in said Department of the Interior; and if it shall appear that such person or corporation is a bona fide purchaser as aforesaid, or that such persons or corporations are such bona fide purchasers, then no suit shall be instituted, and the title of such claimant or claimants shall stand confirmed; but the Secretary of the Interior shall request that suit be brought in such case against the patentee, or the corporation, company, person, or association of persons for whose benefit the patent was issued or certification was made for the value of the land, as hereinbefore specified.

Supreme Court of the United States.

No. 141.—October Term, 1905.

The Southern Pacific Railroad Company, Homer S. King, Trustee, and Central Trust Company of New York, Appellants.
vs.
The United States.

Appeal from the United States Circuit Court of Appeals for the Ninth Circuit.

[February 19, 1906.]

This was a suit begun in the Circuit Court of the United States for the Southern District of California, by bill filed April 13, 1899. The parties named as defendants were the Southern Pacific Railroad Company, the trustees in certain mortgages, and a number of individuals sued as representatives of a class. In a general way it may be said that the bill averred that a large body of lands, some thirty thousand acres and over, had been erroneously patented to the railroad company, and that portions thereof had been conveyed by it to *bona fide* purchasers. The relief sought was the confirmation of the titles of *bona fide* purchasers, the cancellation of the patents to the other lands, and the recovery from the railroad company of the value of the lands conveyed by it to *bona fide* purchasers in accordance with the terms of the acts of Congress of March 3, 1887, (24 Stat. 556;) February 12, 1896, (29 Stat. 6;) March 2, 1896, (29 Stat. 42,) providing for the adjustment of railroad land grants. After answers by the railroad company and some of the individual defendants, proofs were taken, and upon a hearing a decree was entered which in separate paragraphs specifically confirmed the titles to the several tracts held by *bona fide* purchasers, and adjudged that the United States recover from the railroad company the value of those lands, a sum amounting in the aggregate to $33,596.92. (117 Fed. Rep. 544.) This decree was affirmed by the Court of Appeals, (66 C. C. A. 581; 133 Fed. Rep. 651,) from whose decision the railroad company and the trustees appealed to this court.

Mr. Justice Brewer delivered the opinion of the Court.

The appellants challenge the decree on two grounds: First, that a suit in equity cannot be maintained, because there is a plain, adequate and complete remedy at law; and, second, that the United States cannot by

legislation create an obligation of the railroad company for the value of the land patented to and conveyed by it to *bona fide* purchasers.

No objection was made to the jurisdiction of the court as a court of equity by any pleading or before the hearing. It is undoubtedly true that a suit in equity cannot be maintained when there is a plain, adequate and complete remedy at law. Such is the mandate of the Revised Statutes, (R. S. sec. 723,) as well as the general rule in equity. *Lewis* v. *Cocks*, 23 Wall. 466; *Killian* v. *Ebbinghaus*, 110 U. S. 568; *Litchfield* v. *Ballou*, 114 U. S. 190; *Allen* v. *Pullman Car Company*, 139 U. S. 658. It is also true that this objection need not always be raised by some pleading, but may be presented on the hearing even in the appellate court, and if not suggested by counsel may be enforced by the court on its own motion. See authorities just cited. But on the other hand it is equally true that where the objection that the plaintiff has an adequate remedy at law is not made until the hearing, and the subject matter is of a class over which a court of equity has jurisdiction, the court is not necessarily obliged to entertain it, even though if taken *in limine* it might have been worthy of attention. *Wylie* v. *Coxe*, 15 How. 415, 420; *Reynes* v. *Dumont*, 130 U. S. 354, 395; *Kilbourn* v. *Sunderland*, Id. 505, 514; *Brown* v. *Lake Superior Iron Company*, 134 U. S. 530; *Insley* v. *United States*, 150 U. S. 512, 515; *Perego* v. *Dodge*, 163 U. S. 160, 164; 1 Daniell's Chan. Pl. & Pr. (4th ed.) p. 555. It is necessary, therefore, to notice more in detail the allegations in the bill. That sets forth land grants to the Atlantic and Pacific Railroad Company, the Southern Pacific Railroad Company and the Texas Pacific Railroad Company. It shows the acceptance by the Atlantic and Pacific Company of its grant, the filing of its maps of definite location, a failure to complete its road within the State of California, an act of Congress forfeiting the lands along the line of said road within that State, a claim of the Southern Pacific Company to some of those lands, the erroneous patenting of them to that company, a demand for a reconveyance, and the acts of Congress in respect to the adjustment of railroad land grants. The bill further alleges that more than one thousand persons, among whom are the individual defendants named in the bill, who are sued as representatives of the class, had purchased by immediate or mesne conveyances from the Southern Pacific Company certain of those lands specifically described in Exhibit A; that all these purchasers claim an interest in the lands, but the nature and extent of their claims are unknown; that a prior suit, brought to vacate and annul patents, included those lands, and had been dismissed as to them without prejudice, upon the claim of the Southern Pacific Company that it had conveyed them to *bona fide* purchasers. In an amendment to the bill is a prayer (in order to secure an accounting with the railroad company) for a statement of the sales of these tracts, with the names of the

purchasers, dates of sales, purchase prices and amounts paid. The bill also alleges that there is a dispute between the railroad company and the persons purchasing or contracting with it in respect to the validity of the title conveyed, or attempted to be conveyed, by the company; avers that the United States has no desire to question the title of *bona fide* purchasers, but on the contrary seeks to have such title confirmed. It prays for a determination of the tracts sold to *bona fide* purchasers, to the end that the titles thereto may be confirmed, for a decree vacating and annulling the patents for any lands not so sold, and quieting the title of the United States thereto, and that the railroad company be required to account to the United States for the value of the lands sold to *bona fide* purchasers, or such sum as had been received by the company from those sales, not exceeding $1.25 per acre, and for such other and further relief as is just and equitable.

It is contended by the railroad company that this is merely an action in assumpsit to recover the amount claimed to be due for the lands patented to and sold by it to *bona fide* purchasers. But this ignores the full scope of the suit. The bill asked cancellation of the patents and a quieting of the title of the plaintiff to those lands still held by the company, or to *bona fide* purchasers ~~unsold~~. It prayed a discovery of all sales and conveyances, with the dates of the sales and the amounts received thereon. It also sought a confirmation specifically of the titles of *bona fide* purchasers, and finally an accounting with and recovery from the company. A cancellation of patents and a quieting of title is obtainable in equity. *Hughes* v. *United States*, 4 Wall. 232; *Moore* v. *Robbins*, 96 U. S. 530; *Mullan* v. *United States*, 118 U. S. 271; *Williams* v. *United States*, 138 U. S. 514; *Germania Iron Company* v. *United States*, 165 U. S. 379. It is true no decree was entered for the cancellation of any patents, and that matter was thus eliminated from the litigation. But the confirmation of the title of specific tracts to *bona fide* purchasers, which did pass into decree, is equally within the jurisdiction of a court of equity. While discovery is now seldom the object of a suit in equity, and doubtless would not uphold such a suit when the full information was obtainable by proceedings at law, yet it was a well recognized ground of equity jurisdiction, (*Kennedy* v. *Creswell*, 101 U. S. 641, 645; 1 Story's Eq. Juris. 11th ed. secs. 689 and following; 1 Pomeroy's Eq. Juris. sec. 193 and cases cited in notes,) and whether in any given case a court of equity would be justified in acting is a question for its determination. It is unnecessary to determine whether, if properly challenged, the allegations in this bill were sufficient. Probably not. *United States* v. *Bitter Root Development Company*, *ante*, p. . It is enough that discovery was sought, that discovery is not obtainable in an action at law, but only in a suit in equity. It may be that in order to support a recovery from the railroad company it was not necessary that there

be a formal confirmation of the titles of the purchasers from it, or that the purchasers be made parties defendant, yet it was competent for the court under the pleadings to enter such a decree, and the Government was justified in asking for it. Indeed, such action seems to have been contemplated by the statute, for in the second section of the act of March 2, 1896, it is provided: "An adverse decision by the Secretary of the Interior on the *bona fides* of such claimant shall not be conclusive of his rights, and if such claimant, or one claiming to be a *bona fide* purchaser, but who has not submitted his claim to the Secretary of the Interior, is made a party to such suit, and if found by the court to be a *bona fide* purchaser, the court shall decree a confirmation of the title, and shall render a decree in behalf of the United States against the patentee, corporation, company, person, or association of persons for whose benefit the certification was made for the value of the land as hereinbefore provided."

If only an action at law had been brought to recover the value of these lands from the railroad company, unless the verdict had been for the full amount claimed, $1.25 an acre, or unless there had been specific findings of fact showing the particular tracts on account of which recovery was given, it would be open to grave doubt whether any titles would be confirmed, even by inference, and a cloud would be left hanging over the titles of each of these purchasers. Clearly the case here presented was within the jurisdiction of a court of equity, and if there was any objection to that jurisdiction it should have been made *in limine* and not after pleadings had been perfected and proofs taken.

Passing to the other question, it is charged in the bill that these statutes constituted a valid contract between the Government and the railroad company. Now whether that be strictly true we need not stop to consider. It is enough that upon the facts the Government was entitled to recover from the company. Erroneously and by mistake the officers of the Government executed patents to the railroad company conveying the legal title to the lands. The railroad company accepted such title and subsequently conveyed the lands to parties who dealt with it in good faith. When by mistake a tract of land is erroneously conveyed, so that the vendee has obtained a title which does not belong to him, and before the mistake is discovered the vendee conveys to a third party purchasing in good faith, the original owner is not limited to a suit to cancel the conveyances and re-establish in himself the title, but he may recover of his vendee the value of the land up to at least the sum received on the sale, and thus confirm the title of the innocent purchaser. The conveyance to the innocent purchaser is equivalent to a conversion of personal property. Irrespective, therefore, of the act of Congress the Government had the right, when it found that these lands had been erroneously

patented to the railroad company and by it sold to persons who dealt with it in good faith, to sue the railroad company and recover the value of the lands so wrongfully received and subsequently conveyed. The acts of Congress really inure the benefit of the railroad company and restrict the right of the Government, for they provide that the recovery shall in no case be more than the minimum Government price. In other words, the Government asks only its minimum price for public land, no matter what the value of the tracts or the amounts received by the company may be.

It may be noticed in this connection that in no case was the value of any land sold fixed in the decree above the sum received by the company therefor, and that in many instances that sum exceeded the minimum price of $1.25 per acre. It may also be noticed that by stipulation it appears that within the indemnity limits there still remains a large body of lands from which the railroad company can select lands in lieu of those involved in the suit.

We see nothing in this decision of which the railroad company can complain. The decree of the Circuit Court of Appeals is

Affirmed.

True copy.

Test:

Clerk Supreme Court, U. S.